Supreme Court, U.S.
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No.

In the

Supreme Court of the United States

GEORGE A. ROSS,

Petitioner,

v.

HOTEL EMPLOYEES AND RESTAURANT EMPLOYEES INTERNATIONAL UNION; ROBERT BAKER, Co-Trustee; CAROL CARLSON, Co-Trustee,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

I. IN DETERMINING A QUESTION OF FIRST IMPRESSION, THE LOWER COURTS INCORRECTLY INTERPRETED TITLE III – SECTION 304 OF THE LABOR –MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, 29 U.S.C. §464, BY DENYING PETITIONER A CAUSE OF ACTION WHEN HE WAS HARMED BY THE IMPOSTION OF A TRUSTEESHIP IMPOSED FOR AN IMPROPER PURPOSE AND MAINTAINED IN BAD FAITH.

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OPINIONS BELOW

The decision of the United States Court of Appeals for the Third Circuit dated September 17, 2001, is set forth in the Appendix, p.1a (266 F.3d 236). The opinion of the United States District Court for the Western District of Pennsylvania dated January 12, 2000 is set forth in the Appendix, p.53a .

STATEMENT OF THE BASIS OF JURISDICTION OF THE SUPREME COURT

The statutory provision for this Court's jurisdiction is 28 U.S.C. Section 1254. The United States Court of Appeals for the Third Circuit issued its Decision in this case on September 17, 2001. This Petition was timely filed.

RELEVANT STATUTORY PROVISION INVOLVED IN THIS CASE

Statutory Provision

1. 29 U.S.C. §464

Sec. 304. (a) Upon the written complaint of any member or subordinate body of a labor organization alleging that such organization has violated the provisions of this title (except section 301) the Secretary shall investigate the complaint and if the Secretary finds probable cause to believe that such violation has occurred and has not been remedied he shall, without disclosing the identity of the complainant, bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate. Any member or subordinate body of a labor organization affected by any violation of this title (except section 301) may bring a civil action in any district court of the United States

having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate.

STATEMENT OF CASE

Procedural History

Prior to January 6, 1998, Petitioner, George Ross, and Edward Nassan and Darrell Brown were all officers and employees of Local 57 of the Hotel Employees and Restaurant Employees International Union (hereinafter referred to as "HEREIU"). On January 6, 1998, all three employees were fired when a trusteeship was imposed upon Local 57 by the International Union. As a result of the imposition of the trusteeship, Nassan, Ross and Brown filed suit in Federal District Court against HEREIU and the appointed Co-Trustees under Title III of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. §401 *et seq.* (hereinafter referred to as "LMRDA"), at No. 98-629, challenging the International Union's right to impose a trusteeship (hereinafter this case will be referred to as "trusteeship" case). In May 1998, Nassan and Brown advised Ross that they were withdrawing from the trusteeship case resulting in Ross pursuing that case alone.

Shortly after Nassan and Brown withdrew from the trusteeship case, Ross learned that the trusteeship would be terminated and that the International Union would be scheduling new local elections and promulgating election guidelines which would effectively result in Ross being declared ineligible. Having learned of this information, Ross filed a Declaratory Judgment Action in the Court of Common Pleas of Allegheny County, Pennsylvania against HEREIU and the Co-Trustees (hereinafter referred to as "election" case). The Defendants immediately removed the election case to Federal District Court at No. 98-1131.

In the election case, Ross requested a temporary restraining order asking the District Court to restrain the

On July 7, 1999, both actions were consolidated at No. 98-1131 with all parties consenting to have Federal Magistrate Judge Caiazza preside over the cases.

Prior to trial, Defendants filed numerous pretrial motions. On April 23, 1998, Defendants filed a motion to dismiss in the trusteeship case. This motion was denied on December 2, 1998. On December 17, 1998, Defendants filed a motion for summary judgment in the trusteeship case which was denied on June 11, 1999.

Ross filed an amended complaint on February 9, 1999 adding Local 57 as a party and clarifying the damages originally sought by Ross. Defendants never filed an answer to the amended complaint.

Immediately prior to trial, Defendants filed a motion in limine requesting the trial court to preclude Ross from offering any evidence or argument regarding his claim that he was improperly disqualified as a candidate. On October 4, 1999, on the morning of jury selection, the trial court denied Defendants' motion, but held that Ross could not seek any relief which would affect a change in the Local 57 election.

The consolidated matters then proceeded to trial on October 4, 1999. After three days of trial and over two days of deliberation, the jury could not reach a verdict resulting in the Judge declaring a mistrial. The matter was then rescheduled to be tried on January 24, 2000. Prior to the commencement of trial, Defendants filed another motion in limine and motion for summary judgment on December 7, 1999.

On January 12, 2000, the trial judge granted Defendants' motion for summary judgment and dismissed Ross' case. Ross filed a timely appeal with the Third Circuit Court of Appeals which affirmed the trial court's determination.

Petitioner now seeks review by this Honorable Supreme Court.

Statement of the Facts

Prior to January 6, 1998, George Ross had been a member of Local 57 of the HEREUI for over twenty years. In those years, Ross had served as an elected and appointed business agent and as an elected member of the Executive Board.

In the summer of 1997, a federal investigation began into the operation of Local 57 as a result of the Local's affiliation with Anthony "Nini" Lagatutta, an alleged member of organized crime. Simultaneously with this federal investigation, internal problems began between Local 57's long time power base and Nassan, Ross and Brown. This power struggle became so intense that the Executive Secretary, Nancy Davis, a/k/a Nancy Ross, asked the International Union to impose a trusteeship to retake control. In a letter dated November 20, 1997, Kurt Muellenberg, the federally appointed monitor,[1] suggested that a trusteeship be imposed on Local 57 based upon specific charges against the then President, Louis S. Sanfilippo; Executive Secretary, Nancy Davis; Board Secretary, Vince Fera; and Louis Masco.[2] Notwithstanding the immediacy of a trusteeship, General President, Hanley did not appoint Robert Baker as a Trustee until January 6, 1998.

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[1] By Consent Decree dated August 21, 1995, Muellenberg was appointed as a monitor over the operation of the HEREIU. The Decree arose out of charges that the International Union had been infiltrated by members of organized crime. The Decree gave the monitor broad powers with regard to eliminating the influence of organized crime in the International Union and its Locals.

[2] Muellenberg's letter states that a trusteeship "should be imposed". In a letter to Local 57's membership, General President Hanley indicated that he was imposing a trusteeship at the "suggestion" of the monitor.

On January 6, 1998, armed with authority from General President Hanley, Baker appeared at the offices of Local 57 in Pittsburgh and promptly fired Nassan, Ross and Brown. President Sanfilippo resigned and Nancy Davis remained untouched. Because they could not understand why they had been fired when no charges had been brought against them, Nassan, Ross and Brown protested to the monitor's office. The monitor's office contacted International Executive Vice-President, Ron Richardson regarding the termination of Nassan, Ross and Brown. After Richardson directed the Trustee to rehire Nassan, Ross and Brown; the Trustee did so within 24 hours. All three men were hired on probation with Nassan being demoted from a General Organizer to a Business Agent.

Nassan, Ross and Brown filed the trusteeship case challenging the imposition of the trusteeship. At the end of April 1998, Nassan and Brown withdrew as parties leaving Ross as the lone Plaintiff in the trusteeship case. Shortly after Nassan and Brown withdrew from the trusteeship case, the Co-Trustees recommended to General President Hanley that the trusteeship be terminated and that elections be held for officers. In conjunction with this action, the International Union prepared election guidelines which were specifically designed to remove Ross as an eligible candidate and provided them to the Co-Trustees.[3] Because these guidelines precluded Ross from seeking any elected office, he initiated a second action, this time in State court requesting that he be declared eligible as a candidate. Before a State Court judge could rule on Ross' request, Defendants removed this case to Federal Court.

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[3] The International Union also drafted the new bylaws and provided them to the Co-Trustees for the Local's use.

With respect to the eligibility issue, pleadings[4] and evidence demonstrate that on numerous occasions, Ross was declared eligible to seek elected office even though he had been more than sixty days delinquent in the payment of his monthly dues. Notwithstanding the International Constitution and local by-laws to the contrary, Ross was never suspended. However, in November 1997, Ross was suspended by President Sanfilippo when he was delinquent in the payment of his dues. Ross contended that he was not given advance warning of his delinquency prior to the expiration of the sixty days as had been past practice in Local 57. He also contended that he was treated differently this time because President Sanfilippo believed he was cooperating with the federal investigation into his administration.

Federal District Court Judge Lancaster denied Ross' request for a temporary restraining order. The election proceeded with Nassan being elected President; Brown being elected Vice-President and Amanda Veoni, Secretary/Treasurer. In spite of his displeasure with Nassan making a deal with the International Union, Ross did support him for President.

The jury trial in both actions was set for October 4, 1999. After hearing testimony for three days, the jury was unable to reach a verdict after over two days of deliberations. The trial judge then declared a mistrial. Prior to the commencement of the retrial, Defendants filed a motion for summary judgment. In that motion, the Defendants argued that the LMRDA did not permit recovery of the damages Ross sought. Ross opposed the Motion contending that the trial court had previously disposed of Defendants' argument. The federal magistrate disagreed with Ross and concluded that Title III of the Act did not permit the recovery of individual damages, but only those damages experienced by

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[4] *See* Defendants' Responses to Plaintiff's Request for Admissions.

the Local Union. The Third Circuit Court of Appeals affirmed. Ross now seeks review by this Honorable Court.

In disposing of Ross' appeal, the Circuit Court initially acknowledged that Ross presented a question of first impression. The Court then reviewed the legislative history of the Labor Management Reporting and Disclosure Act of 1959 and this Court's holdings in *Finnegan v. Leu*, 456 U.S. 431, 72 L. Ed. 2d 239, 102 S. Ct. 1867 (1982) and *Sheet Metal Workers International Association v. Lynn*, 488 U.S. 347, 102 L. Ed. 2d 700, 109 S. Ct. 639 (1989) and concluded that Title III of LMRDA did not permit an individual to recover damages for an improper imposition of a trusteeship. Disagreeing with the Circuit Court's determination, Ross now seeks review by this Court.

REASONS FOR GRANTING THE WRIT

IN DETERMINING A QUESTION OF FIRST IMPRESSION, THE LOWER COURTS INCORRECTLY INTERPRETED TITLE III – SECTION 304 OF THE LABOR –MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, 29 U.S.C. §464, BY DENYING PETITIONER A CAUSE OF ACTION WHEN HE WAS HARMED BY THE IMPOSTION OF A TRUSTEESHIP IMPOSED FOR AN IMPROPER PURPOSE AND MAINTAINED IN BAD FAITH.

The issue here is one of the first impression for the Court. Does § 464 of the LMRDA give a member of the union affected by a violation of LMRDA the right to seek appropriate relief? Since the Defendants were using the trusteeship as a tool to harm Ross, he is entitled to be compensated for any losses sustained as the result of that misuse. Furthermore, allowing Ross to seek individual damages will inure to the benefit of the entire membership by causing the International Union to fully consider the

ramification of its actions in imposing trusteeships in the future.

The purpose of the LMRDA is to prevent unions from abusing the rights of members. Title III by its very language gives a member the right to seek relief for any violation. Given that Ross was harmed by Defendants, he is entitled to seek damages. Since the District Court held to the contrary, it erred as a matter of law.

After the first trial ended in a hung jury, the Defendants filed a motion for summary judgment under F. R. Civ. P. 56. In their motion for summary judgment, Defendants argued that Ross could not set forth a claim under any set of facts. In essence, Defendants argued that Ross had no right to recover individual damages under the LMRDA and therefore Ross' Complaint must be dismissed with prejudice.

In his Complaint, Ross requested back-pay, front-pay, reimbursement for medical and automobile insurance costs and counsel fees. Prior to this case, the Third Circuit Court of Appeals had not previously addressed the proper interpretation of § 464(a) of the Act.

In relevant part, § 464(a) of the LMRDA states as follows:

> Any member of subordinate body of a labor organization affected by any violation of this title (except Section 301) may bring a civil action in any District Court of the United States having jurisdiction of the Labor Organization for such relief (including injunctions) as may be appropriate. (*emphasis added).*

In its opinion, the Third Circuit Court of Appeals concluded that only Title I of LMDRA and not Title III

provides recourse to a union member harmed by its Union. To support its conclusion, the Court of Appeals relied heavily upon this Court's opinions in *Finnegan* and *Sheet Metal Workers*. Ross respectfully suggests that neither *Finnegan* nor *Sheet Metal Workers* are dispositive of Ross' issue and therefore presents a question of first impression to be addressed by this Court.

Title I of LMDRA provides various rights to all union members including free speech and right of assembly. Conversely, Title III controls union activity specifically when a trusteeship has been imposed. Subsection (c) of Section 464 gives any member of a labor organization the right to file a civil action if a trusteeship was not established for a proper purpose or maintained in good faith. Thus Title III controls all union activity when a trusteeship has been imposed, while Title I could be implicated under circumstances when a trusteeship has not been imposed. The Circuit Court seems to suggest that all rights evolve from Title I and those rights must be categorized as free speech and assembly. Contrary to the Court of Appeals rationale, Ross is not complaining of Title I rights but is complaining of the International Union's improper imposition of a trusteeship and how that action has adversely affected him. Therefore, he is asserting a separate cause of action under Title III.

Section 464(a) section must be read in light of the intended purpose of the Act which is to "prevent abuses in the administration of the trusteeships by labor organizations" and to protect "the rights and interest of employees."

There is no caselaw that specifically addresses the unique circumstances before this Court. However, to support his ruling, the trial judge relied upon *Gesink v. International Association of Machinists and Aerospace Workers*, 831 F.2d 214 (10th Cir. 1987) which Ross contends is distinguishable.

In *Gesink*, plaintiff was the business representative for a Local for the Machinists Union. The Local voted to request

supervision by the Grand Lodge. After a supervisor was appointed, Union disciplinary charges were filed against the plaintiff. The Local delegates then voted to suspend the plaintiff from his office pending resolution of internal charges. A trial before a Union committee was held resulting in the Union's International President removing plaintiff as a business agent.

Plaintiff filed suit seeking damages for his termination. The Defendants filed a motion for summary judgment arguing that Plaintiff had no cause of action for damages under Title III of the LMRDA. In disposing of plaintiff's argument that he is entitled to individual damages under § 464(a), the District Court noted that the intended purpose of the LMRDA was to prevent improper uses of trusteeships. Examples of improper uses of trusteeships included consolidating the power of corrupt officials, plundering the resources of local unions or stifling the growth of political competition within the union. The trial court also recognized the United States Supreme Court's decision in *Finnegan* as instructive to the issue. Based upon its limited interpretation of the intent of § 464(a) and its interpretation of the holding in *Finnegan*, the District Court concluded that plaintiff had no cause of action for individual damages. Instead, the District Court held that § 464(a) was limited to providing relief on behalf of Unions only.

The 10th Circuit Court of Appeals then affirmed the trial court's dismissal on the basis of the District Court opinion.

In reaching its determination, the trial court in *Gesink* chose to ignore the reasoning set forth in *Higgins v. Harden*, 644 F.2d 1348 (9th Cir. 1981) believing that the Supreme Court's decision in *Finnegan* demanded that conclusion.

In *Higgins*, the International Association of Machinists and Aerospace Workers (IAM), the local union and various officers, appealed the District Court's decision

awarding back-pay, other benefits and attorney's fees to plaintiff. The Circuit Court of Appeals affirmed the District Court's determination that a trusteeship was invalidly imposed and the awarding of certain individual damages.

Higgins was employed as a union organizer for the Local Union. Apparently a dispute arose between plaintiff and the directing business representative for the Local Union. As a result of that dispute, the business representative suggested to the International Union that the Local be placed under supervision. The International accepted the suggestion and placed the Local Union under trusteeship. Plaintiff was then terminated as an organizer for the district lodge.

Plaintiff then filed suit under the LMRDA alleging that the trusteeship was improperly imposed and that he was terminated in retaliation for his support of the terminated business representative. Based upon the evidence, the District Court awarded plaintiff back-pay, lost benefits and counsel fees. The Court of Appeals affirmed determining that the trusteeship was not validly imposed. From the Court's opinion, it can be inferred that plaintiff was entitled to all compensatory damages arising from that improper act. Clearly, the Court was of the opinion that individual compensatory damages, such as back-pay, were appropriate.

In *Finnegan*, the specific issue before the Supreme Court was whether a Union President violated the LMRDA when he discharged a Local Union appointed business agent who supported the President's opponent for office. Plaintiff had supported the incumbent President in a hotly contested election. After the new Union President took office, he discharged the plaintiffs who had supported his opponent. The discharged business agents then filed suit in the United States District Court alleging that they had been terminated from their appointed positions in violation of the Act. The District Court granted summary judgment to the defendants

holding that § 411(a) of the Act gave plaintiff no protection from discharge.

In *Finnegan*, a trusteeship had not been imposed. Instead, the plaintiffs lost their jobs merely through a change of leadership. Title I guarantees members the right to vote and express their views without the threat of reprisals. However, an election victory is a mandate for a successful candidate to implement his programs. Since the purpose of Title I is to ensure the democratic process, there is no impediment to that purpose if a successful Union President chooses to hire employees consistent with his own philosophy. The Court stated:

> For whatever limits Title I places on a union's authority to utilize dismissal from union office as "part of a purposeful and deliberate attempt... to suppress dissent within the union, it does not restrict the freedom of an elected union leader to choose a staff whose views are compatible with his own.

102 S. Ct. at p. 1873.

The overriding factor which persuaded the Supreme Court in making this determination was the fact that Congress was clearly concerned with promoting union democracy. To require a newly elected President to hire the opposition would be counter to the intended purpose. Critical in the Court's analysis was the fact that plaintiff's Title I rights were not violated.

The *Finnegan* rationale is not without exception. In *Sheet Metal Workers International Association v. Lynn*, supra., this Court was confronted with another termination challenge under the LMRDA. In *Sheet Metal Workers*, the plaintiff, Lynn, was an elected business representative for Local 75 of the International Union. After a trusteeship was imposed for financial reasons, plaintiff opposed a dues

increase proposed by the trustee, even though the trustee had requested plaintiff's support. Five days after the dues increase was voted down, plaintiff was removed from his position as a business representative. Plaintiff brought suit in District Court under § 412 of the LMRDA claiming that his removal violated his free speech rights guaranteed by Title I of the Act. The District Court granted summary judgment relying upon *Finnegan*. The Court of Appeals reversed.

This Court affirmed the Court of Appeal's reversal notwithstanding the *Finnegan* decision. In distinguishing *Finnegan*, this Court utilized a weighing process. This Court noted that in *Finnegan,* the Court held that the need to vindicate the democratic process outweighed any potential chilling affect on free speech when an appointed business agent is terminated for supporting the opposition candidate. This Court then went on to explain in *Sheet Metal Workers* that the removal of an elected official by a trustee is much different requiring a different analysis. Not only would a fired elected official take pause before exercising his free speech rights under Title I, but his constituency likewise would be hesitant to express opposition in light of their leader's termination. The impression left to the general membership is that a challenge to the union hierarchy is at one's peril. The Court concluded that this result was contrary to the expressed intent of the LMRDA which is to ensure a democratic organization with the freedom to discuss union policies and criticize leadership. Thus, the Court concluded that plaintiff's retaliatory removal stated a cause of action under § 412 of the Act.

In *Sheet Metal Workers,* this Court held that the imposition of a trusteeship did not dilute Title I protection. Furthermore, this Court has not held that Title I is exclusive in providing protection to union members or that Title III only provides rights or protections through Title I. If only Title I rights exist and Title III provides no additional rights, then Congress would not have needed to insert the last

sentence of Section 464(a) in Title III, which is the exact language set forth in Section 412 of Title I.[5]

Other jurisdictions have rendered decisions which support Ross' position in this appeal.

In *McDonald v. Oliver*, 525 F.2d 1217 (5th Cir. 1976), the Court of Appeals affirmed the District Court's judgment, in relevant part, dissolving a trusteeship imposed by the International Union and awarding back-pay and attorney's fees.

Initially, the Court recognized that,

> although the primary purpose of an individual's lawsuit is obviously to vindicate his own rights or facilitate his own candidacy, there can be little doubt that he renders a substantial service to the union as an institution and to his members individually in protecting local democratic processes through Titles I and III. The successful litigant dispels the "chill" cast upon the rights of others.

at p. 1221. The Court then went on to hold that intra-union appeals would be unlikely to provide much relief since the protests would be to the very International which invoked the trusteeship." at p. 1229. Finally, the Court of Appeals affirmed that award of back-pay to plaintiff.

Likewise, in *Petramale v. Local No. 17 of Laborer's International Union of North America*, 671 F.Supp. 261 (S.D.N.Y. 1987), the District Court recognized that an individual is entitled to recover personal damages under the

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[5] Title I was adopted as an amendment on the Senate Floor because legislators feared that union members needed **general** protection from union leadership. *Steelworkers v. Sadlowski*, 457 U.S. 102, 102 S.Ct. 2339, 72 L.Ed.2d 707 (1982). Thus Title I protection must be in addition to any protection provided to union members under Title III.

LMRDA. Although the plaintiff was unable to sustain his claim by sufficient proof, the District Court did acknowledge plaintiff's right to seek compensatory damages:

> It is beyond cavil that in actions under LMRDA, a plaintiff is required to prove that the injury he or she sustained was causally connected to the wrongdoing by defendant.

at p. 265. Because Plaintiff could not substantiate his damages, the trial court reversed the award of substantial damages by the jury and awarded nominal damages in the amount of one dollar ($1.00).

Five years after the United Supreme Court decided *Finnegan*, the District Court in Georgia still acknowledged with approval *McDonald* in *Pruitt v. United Brotherhood of Carpenters and Joiners of America*, 659 F. Supp. 1511 (ND Ga. 1987). In *Pruitt*, the plaintiff, a business agent, filed suit under Title III of the LMRDA against the International Union and the Trustee as a result of losing his job during the trusteeship.

In its discussion of plaintiff's cause of action under the LMRDA, the Court noted that the Act was "needed to protect both the rights of the membership as a whole and the rights of individual members." at p. 1517 (*emphasis added*). The Court also recognized that in some instances trusteeships have been used as a means of consolidating power and impeding the growth of competing political elements within the organization. Furthermore, the manner in which § 464 is drafted suggests that either the local labor organization or union members themselves can bring suit for a wrongfully maintained trusteeship. The Court also noted that since individual members can bring suit, those individuals can seek damages, citing to *McDonald*. (*See* Note 11, p. 1520). Based upon the foregoing analysis, the Court permitted plaintiff to

proceed with his claim arising out of the maintenance of the trusteeship.

Finally, the 6th Circuit Court of Appeals was confronted with a factual scenario very similar to the Ross case in *Pope v. Office and Professional Employees International Union*, 74 F.3rd 1492 (6th Cir. 1996).

In *Pope*, the plaintiff had been terminated as a union employee by the trustee appointed by the International after the International Union determined that Pope was acting against the best interest of the current administration. It was clear that Pope represented a threat to the existing power structure and for that reason, he needed to be removed. In fact, changes were made to the local constitution to ensure that Pope would not be eligible to seek an elected office in opposition to the current power base.

In an attempt to stop Pope, supporters of the current administration requested the International to impose a trusteeship. The International Union accepted the request and did appoint a Vice- President as the Trustee. That Trustee then fired Pope. The Trustee also refrained from scheduling elections in order to assist the International's slate of candidates, thereby attempting to control the election outcome. Notwithstanding the International's attempts, the reformers won the election and took control over the local.

Before the trusteeship was dissolved, Pope filed suit in District Court alleging that the trusteeship was imposed for an improper purpose and sought individual compensatory damages, including lost wages. After a fourteen day trial, the jury found in favor of Pope and awarded $100,000.00 in compensatory damages and $100,000.00 in punitive damages. In reaching its verdict, the jury concluded that the evidence proved that the trusteeship was maintained for an improper purpose and that Pope's termination as an employee was part of a scheme to suppress Pope's participation in the union's election and affairs.

On appeal, the Court of Appeals affirmed the verdict. In doing so, the Court of Appeals rejected the International Union's arguments that suggested that Pope failed to prove a claim for which relief could be granted. The Court rejected the International's argument that plaintiff's cause of action was moot since the trusteeship was dissolved, acknowledging that an International Union could use a trusteeship as a means to suppress members' rights and then dissolve the trusteeship before plaintiff had his day in court resulting in plaintiff's claim being considered moot. The Court of Appeals concluded that Pope's cause of action was not moot since his rights had been violated prior to the dissolution of the trusteeship and the damages he sought were related to the violations he suffered as a result of the imposition of the trusteeship.

Section 464, itself, and all of the foregoing cases support Ross' position that he can pursue individual claims under Title III of the LMRDA. Section 464 states that "any member or subordinate body of a labor organization affected by any violation of this Title (except § 301) may bring a civil action. . . for such relief. . . as may be appropriate." (*emphasis added*). If individual members have no rights or claims under Title III, then why would this section give a member a cause of action?

Ross' theory throughout this litigation has been that the International Union was using a trusteeship as a mechanism to discredit and remove individual members of Local 57 (*i.e.*, Nassan, Ross and Brown). Initially, the trusteeship was going to be used to retain Nancy Davis as the anointed power base for the International Union. When it became apparent that she was not going to survive the federal investigation, the International Union needed to align itself with someone else. In this instance, that someone else was Nassan, at the expense of Ross. As part of that deal, Nassan had to agree with the International Union to effectively destroy and remove Ross.

The record is replete with evidence establishing the fact that the International Union wanted to remove Ross as an influential member of Local 57. Nancy Davis testified about a conversation she had with Co-Trustee Baker at the end of April 1998, prior to the conclusion of the trusteeship and the nomination of candidates for offices, that Nassan, Brown and Amanda Veoni would be the slate for the yet to be announced election. Likewise, Co-Trustee Carlson indicated to Davis in April 1998 that Nassan, Brown and Veoni would be "taking over" at the end of the trusteeship. In the context of the eligibility requirements, the Co-Trustees advised Davis that they were drafting the by-laws and would make "whoever they wanted eligible." Baker also indicated to Davis that "George (Ross) had to go." Finally, Ron Richardson informed Davis at a trustee meeting in April 1998, that "Eddie Nassan is the boy. He will be the president."

Barry Trainor, an investigator for the monitor's office into the affairs of Local 57, also testified as to the agreement offered to Nassan by the International Union which ultimately was at the expense of Ross. Trainor testified that he had "multiple" discussions with Nassan regarding a deal the International Union was offering him. Nassan indicated to Trainor that he (Nassan) had been offered a deal to enable him "to run for President of Local 57." Sometime in April after April 16, 1998, Nassan advised Trainor that he was going to "accept the deal with the International."

Nassan, himself, was required to admit on the witness stand that the International Union had offered him a deal which required the elimination of Ross. Ross' Exhibit No. 8, which is Nassan's own handwriting, memorialized a meeting that Nassan had with Co-Trustee Carlson on April 3, 1998. At that meeting, Co-Trustee Carlson "tried to make a deal to eliminate George Ross." This deal was the one referred to by Trainor in his testimony.

The Defendants argued at trial that they did nothing out of the ordinary when they disqualified Ross as an eligible candidate for elective office. However, the evidence established that eleven out of thirteen times, Ross was delinquent in the payment of his monthly dues. Yet, Ross was declared eligible to hold various offices and did win various elections including the position of a delegate for the International Convention. Even though the Co-Trustees admitted that it was common practice to notify any member of his/her delinquency in sufficient time for the member to pay his dues and avoid suspension, in November 1997, the office staff of Local 57 failed to give Ross notification of his delinquency even though the office staff gave him notices for other members. In fact, the staff's failure to follow this common practice in 1995, was the reason for Local 57 overlooking Ross' delinquency when considering his eligibility for a national delegate to the International Convention in 1996. The International Union also failed to deny him credentials at the Convention, even though reports of his delinquency and suspension had been furnished to the International Union.

If believed, this evidence proves that the trusteeship was being used as a vehicle to remove George Ross. For summary judgment purposes, this Court must assume that the trusteeship was imposed and maintained for an improper purpose, the purpose being to prevent Ross (and previously his two colleagues, Nassan and Brown) from seeking and winning elective offices in Local 57. As a result of this improper use of a trusteeship, Ross suffered direct or proximate damages. But for the imposition of the trusteeship, Ross still would be employed. Since the trusteeship was intended for an improper purpose and maintained in bad faith, the Defendants violated the LMRDA. Ross, as a member of Local 57, was "affected" by the violation of the LMRDA. The damages Ross requested were "appropriate" to make him whole.

The actions of the International Union will have also a chilling affect on all members of Local 57. If the International Union succeeds in destroying Ross and leaving him with no recourse, then other members will refrain from opposing the International Union. On the other hand, if the International Union is required to defend Ross' action and to compensate him for its misuse of the trusteeship, then the International Union will think twice next time before using a trusteeship as a means to harm one of its members. In this respect, Ross' actions benefit all members and inure to the benefit of the "subordinate body of a labor organization" in addition to himself.

The purpose of the LMRDA is to prevent unions from abusing the rights of individual members. Title III by its very language gives a member the right to seek relief for any violation. If there is a violation which adversely impacts a member, that member is entitled to appropriate relief. In this instance, appropriate relief would be all monetary damages that flow from that violation.

CONCLUSION

Viewing the facts in a light most favorable to Ross, this Court must assume that the International Union imposed a trusteeship upon Local 57 for an improper purpose and in bad faith. Section 464(a) of the LMRDA permits any member of a subordinate body of a labor organization affected by a violation to seek appropriate relief. Neither Section 464(a) nor any case law restricts Ross' right to seek individual damages for the wrong he suffered. If he is precluded from recovering his damages, then Section 464(a) of Title III is meaningless. Section 464(a) would not provide a member the right to seek relief if in fact that member was limited to damages to the union as a whole. The Congress could have clearly provided for such a limitation but chose not to.

Therefore, Ross is requesting the Honorable Supreme Court to grant this Petition to resolve this question of first impression relating to the abusive use of trusteeships under Title III of the Labor Management Reporting and Disclosure Act of 1959.

Respectfully submitted,

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No. 00-3142

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

GEORGE A. ROSS,
Appellant

v.

HOTEL EMPLOYEES AND RESTAURANT EMPLOYEES INTERNATIONAL UNION; ROBERT BAKER, Co-Trustee; CAROL CARLSON, Co-Trustee

September 14, 2000, Argued

September 17, 2001, Filed

PRIOR HISTORY:
Appeal from the Judgment of the United States District Court for the Western District of Pennsylvania. Civil Action No. 98-cv-01131. Magistrate Judge: Francis X. Caiazza.

DISPOSITION:
Affirmed.

COUNSEL:
THOMAS M. CASTELLO, ESQ. (Argued), Plunkett & Cooney, P.C., Pittsburgh, PA, Attorney for Appellant.

RICHARD L. STOPER, Jr., ESQ. (Argued), SUSAN L. GRAGEL, ESQ., Rotatori, Gragel & Stoper CO., L.P.A., Cleveland, Ohio, Attorneys for Appellees.

JUDGES:
Before: ROTH, McKEE and RENDELL, Circuit Judges.

OPINION BY:
McKEE

OPINION:

OPINION OF THE COURT

McKEE, Circuit Judge.

We are asked to review the district court's grant of summary judgment in favor of Hotel Employees and Restaurant Employees International Union ("HEREIU"), and Robert Baker and Carol Carlson; and against plaintiff George Ross. Ross sued under Title III of the Labor Management Reporting and Disclosure Act of 1959. For the reasons that follow, we will affirm.

I. Factual and Procedural Background[1]

George Ross is a member of Local 57, a subordinate labor organization of HEREIU. Before January 6, 1998, Ross had been an elected non-salaried member of the Executive Board of that Local as well as an appointed full time salaried employee holding the title of business agent.[2]

On September 5, 1995, the United States entered into a Consent Decree with HEREIU. The Consent Decree appointed a federal monitor "for the remedial objective of relieving HEREIU and Local 57 from the direct or indirect influence of any organized crime group or the threat of such an influence." App. At 104. Sometime during the summer of 1997, the United States Department of Justice began investigating organized crime's relationship with Local 57. Thereafter, the federal monitor brought charges of corruption involving several officers of Local 57 including Louis Sanfilippo, President; Nancy Davis, Secretary-Treasurer; Vince Fera, Recording Secretary; and Louis Masco, a union member.

At the same time this investigation was proceeding, a power struggle erupted between Local 57's "power base" and three of the other officers of the Local: Ross, Nassan and Brown.[3] Ross and Brown were then business agents of Local 57, and Nassan was a general organizer. According to Ross, the power struggle progressed to the point that the Local's Executive Secretary, Nancy Davis, n4 asked the International to assume control of Local 57 by establishing a trusteeship.

In November of 1997, the federal monitor also requested that a trusteeship be established based on the charges brought against the officers of Local 57. Eventually, Robert Baker was appointed as the first of two Trustees who assumed control of Local 57.[5] On the same day he was appointed, Baker fired Nassan, Ross and Brown; and Sanfilippo resigned. However, Nassan, Ross and Brown were rehired within 24 hours of their firing after complaining to the monitor.

An election for officers of Local 57 was scheduled for March 1998, but the Trustees canceled the election, and suspended the Local's constitution and by-laws. In April of 1998, Ross, Nassan and Brown filed the first of two lawsuits challenging HEREIU's right to impose a trusteeship. They named HEREIU and the two Trustees as defendants (the "Trusteeship case"). The plaintiffs asserted that, "given the resignation of Sanfilippo and the failure of HEREIU or the Trustees to suspend Nancy Ross, it is clear that the continuation of the Trusteeship is improper and therefore must be dissolved." Ross' Complaint at P 26 (No. 98-629). The plaintiffs sought declaratory and equitable relief under Title III of the Labor Management Reporting and Disclosure Act of 1959 (the "LMRDA") which governs the creation and maintenance of trusteeships by labor organizations. See 73 Stat. 519 § § 301-01 (1959), *29 U.S.C. § § 461*-66 (1998 & Supp. 2000) The prayer for relief included a request that the court dissolve the Trusteeship, reinstate the constitution and by-laws of Local 57, and order immediate elections. The

plaintiffs also moved for a TRO to enjoin the Trustees from running Local 57's operations. That motion was denied. At the end of April, Nassan and Brown withdrew from the lawsuit, leaving Ross as the only plaintiff.[6]

During the summer of 1998, the Trustees decided to hold new elections and terminate the Trusteeship. They also issued new election guidelines under which Ross became ineligible to run for office because his union dues were delinquent. Ross argues that these guidelines were specifically intended to remove him as an eligible candidate.[7] In addition to the new election guidelines, the Trustees also "proposed a new Constitution which terminated George Ross' position as full time salaried business agent." Ross' Amended Complaint at P 38 (No. 98-629).

In July of 1998, Ross filed a second lawsuit against the same defendants in state court (the "election case"). Ross sought a declaration that he was an eligible candidate for the upcoming election, and an injunction to prevent the election from proceeding until his eligibility could be determined. That suit was removed to federal court on motion of the defendants, and the district court thereafter refused to enjoin the election. Ross was not permitted to run for office because of the aforementioned eligibility restrictions. On the day of the election, Ross, Nassan and Brown received letters terminating their employment as business agents. As a result of the election, Nassan was elected president and principle officer. After the swearing in of the new officers of the union, the Trusteeship was dissolved. Ross was not re-appointed as a business agent by the newly elected officers.

In December of 1998, the defendants filed a motion for summary judgment in the Trusteeship case. They argued that Ross' claim for equitable relief had been rendered moot by the election of new officers and the resulting dissolution of the Trusteeship. Ross answered arguing that the crux of the Trusteeship case was that the Trusteeship had been imposed

in bad faith to remove political opposition. He insisted that all actions carried out pursuant to the Trusteeship were void. In February of 1999, Ross filed an amended complaint in the Trusteeship case alleging continuing harm and asking the district court to:

Void the following actions taken in conjunction with that Trusteeship:

> i. The suspension of the Local By-Laws and Constitution;
>
> ii. The firing of the Plaintiff, George Ross on January 6, 1998;
>
> iii. The imposition of the new eligibility requirements to run for elected office intended to exclude George Ross as a candidate for the July, 1998 elections;
>
> iv. The firing of George Ross on August 10, 1998.

Ross' Amended Complaint, P 9 (No. 98-629). He also requested temporary reinstatement, scheduling of new elections, monetary damages, counsel fees, and costs.

The district court consolidated Ross' two lawsuits and the matter was scheduled for trial. Essentially, Ross contended that he was harmed in two respects as a result of the improper continuation of the Trusteeship. He alleged that he had suffered damages as a result of being declared ineligible to run for office in the August 1998 elections. He also alleged damages as a result of the termination of his appointed position as a business agent. Prior to trial, the defendants filed a motion in limine seeking to exclude evidence or argument regarding Ross' purportedly improper exclusion from the August election. The court denied that motion but did enter an order precluding Ross from "seeking any relief which would effect a change in the union election." Ross v.

Hotel Employees and Restaurant Employees Int'l Union, No. 98-1131, slip. op. at 9 (W.D. Pa. Oct. 4, 1999).

After both sides rested in the ensuing trial, the jury reported that it was deadlocked and the court declared a mistrial. However, before the scheduled retrial was to begin, the defendants moved for summary judgment on all of Ross' claims. The defendants argued that Ross was precluded from asserting an individual claim for monetary damages under Title III of the LMRDA. Ross opposed the motion by relying solely on the law of the case doctrine. He contended that the court had already implicitly decided that an individual could sue for damages under Title III because the court sent the damage suit to the jury in the first trial.

The district court rejected Ross' law of the case argument stating: "the issue of whether Title III supports Ross's individual requests for relief has not yet been adjudicated by the Court." Ross v. Hotel Employees and Restaurant Employees Int'l Union, No. 98-1131 slip. op. at 12 (W. D. Pa. Jan. 12, 2000). The court noted that Ross had not asserted a timeliness challenge, and concluded that it had broad discretion to entertain the defendants' motion for summary judgment even though the issues had been submitted to a jury. Id. at 6 (citing *In re Sch. Asbestos Litig., 977 F.2d 764, 794 (3d Cir. 1992)).* The court ultimately held that interests of judicial economy counseled in favor of adjudicating the summary judgment motion and granted summary judgment in favor of the defendants and against Ross.

In doing so, the court relied on the text and legislative history of the LMRDA as well as relevant precedent from other circuit courts of appeals. The court held that Ross' claims were all individual in nature and that Title III of the LMRDA does not allow plaintiffs to seek individual relief. Id. at 12-13, 16-17. Rather, the district court concluded that Title III was intended to protect local unions, not their individual members. Id. at 14. The court relied in large part

upon *Gesink v. Grand Lodge, International Ass'n of Machinists and Aerospace Workers, 831 F.2d 214 (10th Cir. 1987)*, in stating:

> the purposes listed in Title III as justifying the creation of a trusteeship have nothing to do with protecting union members' or employees' individual rights; rather, they seek to protect locals from 'corruption' or 'financial malpractice' of their agents and to ensure that such agents comply with their obligations and 'otherwise carry [ ] out the legitimate objects of ' the union.

Ross, slip. op. at 12. The court concluded that Ross' claim was not appropriately brought under Title III because each form of requested relief was intended to compensate him, not his Local.

> Plaintiff 's requests for lost wages, medical insurance coverage, and other 'out of pocket costs' associated with his termination as business agent, as well as his request for reinstatement, are asserted on his own behalf and for his own benefit, not for that of Local 57.

Id. at 16-17. The district court did acknowledge that Ross sought other equitable relief including a declaration that the Trusteeship was improperly imposed in bad faith and the voiding of certain of the Trustee's actions. Id. at 17 n.3.[8] However, inasmuch as that relief was ancillary to Ross' primary attempt to redress his individual injuries, Ross' entire case was dismissed. This appeal followed.[9]

II. Jurisdiction and Standard of Review

The district court had jurisdiction pursuant to § 304 of the LMRDA. 73 Stat. 519 § 304, *29 U.S.C. § 464.* We have jurisdiction from the district court's final order granting summary judgment under *28 U.S.C. § 1291.* We exercise plenary review. *Resolution Trust Corp. v. Fidelity and Deposit Co. of Maryland, 205 F.3d 615, 626 (3d Cir. 2000).*

III. Discussion

Ross' appeal presents two questions for resolution. First, we must determine if Ross has waived the arguments he makes now because he did not raise those arguments in opposition to the defendants' summary judgment motion in the district court. If we address the merits of his claim we must decide the very important question of whether Title III of the LMRDA affords Ross a cause of action under the circumstances of this case.

A. Waiver

As noted above, Ross' opposition to the defendants' motion for summary judgment in the district court was limited to his contention that the law of the case precluded summary judgment because the merits of his claim had been submitted to a jury. The district court disagreed with his position, and that ruling has not been appealed. On appeal, for the first time, he argues the merits of the defendants' claim that Title III of the LMRDA does not provide a cause of action for individual relief.

Generally, "absent compelling circumstances an appellate court will not consider issues that are raised for the first time on appeal." *Patterson v. Cuyler, 729 F.2d 925, 929 (3d Cir. 1984),* overruled on other grounds recognized in *Carter v. Rafferty, 826 F.2d 1299 (3d Cir. 1987)* (citing *Singleton v. Wulff, 428 U.S. 106, 120-21, 49 L. Ed. 2d 826, 96 S. Ct. 2868 (1976)).* In Patterson, we explained:

> This prudential policy seeks to insure that litigants have every opportunity to present their evidence in the forum designed to resolve factual disputes. By requiring parties to present all their legal issues to the district court as well, we preserve the hierarchical nature of the federal courts and encourage ultimate settlement before appeal. It also prevents surprise on appeal and gives the appellate court the benefit of the legal analysis of the trial court. It is however not a jurisdictional bar, and the statement of policy permits exceptions in appropriate cases.

Id. (citations omitted).

The case at bar has important implications for the field of labor law, and raises a question of first impression in this circuit. Moreover, the procedural posture also raises procedural questions that we have not previously addressed. As noted above, the summary judgment motion was made after a jury deadlocked and a mistrial was declared. However, because of that unique procedural posture, the defendants can hardly claim at this late date that Ross' assertion of a private cause of action under Title III is a surprise, or that Ross' position prejudices them. They have obviously assumed that he had a private cause of action under Title III throughout the course of this litigation including trial. Although Ross failed to respond to the merits of defendants' arguments in the summary judgment motion, the district court was afforded the rare advantage of a fully developed record in analyzing the issues raised by the motion for summary judgment. Inasmuch as the defendants are not unfairly prejudiced by the lateness of Ross' arguments, and given the importance of the issues raised by this grant of summary judgment, we think it appropriate to resolve this appeal on the merits, and not upon the procedural grounds that the defendants argue in the alternative.

Moreover, the district court did not err in considering a motion for summary judgment after a mistrial. If there are no issues of material fact and a party is entitled to judgment as a matter of law, judgment may be awarded at any time, even after trial, under Rule 56 or under Rule 50. There was no reason to require the court to go through the procedural calisthenics of a second trial merely because the motion for judgment was brought after the mistrial. Accordingly, we will consider the merits of the arguments before us.

B. Title III of the LMRDA

This dispute arises in the context of a trusteeship that was imposed pursuant to Title III of the LMRDA.[10] The LMRDA defines a trusteeship as "any receivership . . . or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws." 73 Stat. 519 § 3(h), *29 U.S.C. § 402*(h). Title III limits the establishment of trusteeships as follows:

> 'Trusteeships shall be established and administered . . . for the purpose of [1] correcting corruption or financial malpractice, [2] assuring the performance of collective bargaining agreements or other duties of a bargaining representative, [3] restoring democratic procedures, [4] or otherwise carrying out the legitimate objects of such labor organization.

73 Stat. 519 § 302, *29 U.S.C. § 462.* Specifying proper purposes protects the local union organization and its membership as a whole from the misuse of the trusteeship power. Title III provides that a trusteeship is "presumed valid for a period of eighteen months . . . and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained

in good faith for a purpose allowable under section 302." 73 Stat. 519 § 304(c), *29 U.S.C. § 464*(c). The provision also states: "any member or subordinate body of a labor organization affected by a violation of this title may bring a civil action in any district court . . . for such relief (including injunctions) as may be appropriate." 73 Stat. 519 § 304(a), *29 U.S.C. § 464*(a). It is this provision that provides the proverbial "rub" here, as we must determine if the individual relief that Ross is seeking is "appropriate" under Title III.[11]

Our inquiry is therefore circumscribed by our interpretation of this statute.

> In any case turning on statutory interpretation, our goal is to ascertain the intent of Congress. To accomplish this goal, we begin by looking at the statute's language. If the language is plain, we need look no further. If the statutory language is ambiguous or unclear, we may look behind the language to the legislative history for guidance.

Collinsgru v. Palmyra Bd. of Educ., 161 F.3d 225, 233 (3d Cir. 1998). The intricate legislative history of the LMRDA has caused the Supreme Court to note that:

Archibald Cox, who actively participated in shaping much of the LMRDA, has remarked:

> 'The legislation contains more than its share of problems for judicial interpretation because much of the bill was written on the floor of the Senate or House of Representatives and because many sections contain calculated ambiguities or political compromises essential to secure a majority. Consequently, in

> resolving them the courts would be well advised to seek out the underlying rationale without placing great emphasis upon close construction of the words.'

Wirtz v. Glass Bottle Blowers Asso., 389 U.S. 463, 468 n.6, 88 S. Ct. 643, 19 L. Ed. 2d 705 (1968) (citing Cox, Internal Affairs of Labor Unions Under the Labor Reform Act of 1959, *58 Mich. L. Rev. 819, 852 (1960)).* Thus the practice of interpreting ambiguous statutory language in light of its legislative history is of particular value in the context of the LMRDA. Although we do not consider the word "appropriate" an ambiguous term in and of itself, to the extent that the text of the LMRDA does not adequately define the term in context, and thereby definitively establish what remedies are "appropriate" under Title III, we are compelled to consult the statute's legislative history. See *West Virginia Univ. Hospital, Inc. v. Casey, 499 U.S. 83, 98, 113 L. Ed. 2d 68, 111 S. Ct. 1138 (1991)* (it is appropriate to resort to legislative history to determine the meaning of ambiguous legislation). The legislative history of Title III confirms our analysis.

C. The Legislative History of Title III

In 1957, the Select Committee on Improper Activities in the Labor Management Field of the United States Senate, more commonly known as the "McClellan Committee," began investigating and gathering findings on the internal affairs of labor unions. Note, Landrum-Griffin and the Trusteeship Imbroglio, *71 Yale L.J. 1460, 1473 (1962)* (hereinafter "Note, Trusteeship Imbroglio"). The McClellan Committee's findings "exposed the details of the sad state of democracy in large sections of the labor movement and provided numerous examples of the abuses of the trusteeship power." *Sheet Metal Workers' Int'l Ass'n v. Lynn, 488 U.S. 347, 357 n. 8, 102 L. Ed. 2d 700, 109 S. Ct. 639 (1998)* (quoting Note, Trusteeship Imbroglio at 1473).

> The Labor-Management Reporting and Disclosure Act of 1959 was the product of congressional concern with widespread abuses of power by union leadership. The relevant provisions of the Act had a history tracing back more than two decades in the evolution of the statutes relating to labor unions. Tensions between union leaders and the rank-and-file members and allegations of union wrongdoing led to extended congressional inquiry. As originally introduced, the legislation focused on disclosure requirements and the regulation of union trusteeships and elections. However, various amendments were adopted, all aimed at enlarged protection for members of unions paralleling certain rights guaranteed by the Federal Constitution; not surprisingly, these amendments--ultimately enacted as Title I of the Act, *29 U.S.C. § § 411*-415--were introduced under the title of "Bill of Rights of Members of Labor Organizations." The amendments placed emphasis on the rights of union members to freedom of expression without fear of sanctions by the union, which in many instances could mean loss of union membership and in turn loss of livelihood. Such protection was necessary to further the Act's primary objective of ensuring that unions would be democratically governed and responsive to the will of their memberships.

Id. at 352 (citing 105 Cong. Rec. 6471-6472, 6476, 15530 (1959)).

Title III of the LMRDA, the trusteeship title, first emerged as Title II[12] of the Kennedy-Ives Bill passed by the Senate in June of 1958. *Lynn, 488 U.S. at 357 n.8.* It

appeared again in January of 1959 in the Kennedy-Ervin Bill. Id.; Note, Trusteeship Imbroglio at 1475. The Kennedy-Ervin Bill focused on disclosure and reporting requirements, trusteeships and elections. U.S. Code Cong. & Admin. News at 2318-72; *Lynn, 488 U.S. at 352.* The accompanying Committee Report to the Kennedy-Ervin Bill reflects the overarching concern of guaranteeing internal union democracy while minimizing governmental interference with the internal affairs of unions. See, e.g., 1959 U.S.C.C.A.N. at 2322-23; Jerry E. Linde, Title III of the Labor or Management Relations and Disclosure Act: For Greater Judicial Protection of Union Democracy and Local Automony, *9 J. Corp. L. 271, 276-80 (1984);* Marcia Greenblatt, Union Officials and the Labor Bill of Rights, *57 Fordham L. Rev. 601, 601-02 (1989).* This report acknowledged that trusteeships had been effective in the past "to insure order within [labor] organizations." U.S. Code Cong. & Admin. News at 2333. However, it also acknowledged the McClellan Committee's findings regarding the misuse of the trusteeship authority. The Committee Report noted:

> in some instances trusteeships have been used as a means of consolidating the power of corrupt union officers, plundering and dissipating the resources of local unions, and preventing the growth of competing political elements within the organization.

Lynn, 488 U.S. at 357 n. 8 (quoting 1959 U.S.C.C.A.N. at 2333). The Committee Report also explained why then current law was ineffective:

> A trusteeship will ordinarily be set aside unless the local is given a fair hearing including notice of the charges and an

> opportunity to defend. But if the forms of fair procedure are observed there appears to be little the courts can do and there are very few cases staying or upsetting trusteeships upon substantive grounds.
>
> Men have frequently been subjected to fines as large as $ 1,000 for bringing suit against a union; others have been expelled from the membership.
>
> The Committee on Labor and Public Welfare therefore concurs in the select committee's recommendation that there should be a 'limitation on the right of internationals to place local unions in trusteeship.'

U.S. Code Cong. & Admin. News at 2333.

The Kennedy-Ervin Bill underwent seven months of rewriting and debate involving several amendments. Note, Trusteeship Imbroglio, at 1475. A major alteration was the addition of a "Bill of Rights of Members of Labor Organizations." Id. The Bill of Rights "was adopted as an amendment on the Senate floor by 'legislators who feared that the [original] bill did not go far enough because it did not provide general protection to union members who spoke out against union leadership.' " *Lynn, 488 U.S. at 352* (quoting *Steelworkers v. Sadlowski, 457 U.S. 102, 72 L. Ed. 2d 707, 102 S. Ct. 2339 (1982))*. Those legislators believed this Bill of Rights was needed to further protect the rank-and-file members and reinforce the other provisions of the LMRDA, including the trusteeship provision.

In these debates, Senator McClellan stated:

> I do not believe that racketeering, corruption, abuse of power and other improper practices on the part of some labor organizations can be, or will ever be, prevented until and unless the Congress of the United States has the wisdom and the courage to enact laws prescribing minimum standards of democratic process and conduct for the administration of internal union affairs. I mean by that, . . . that the Congress should prescribe and define by law what the rights of union members are, place in them by democratic process the power to secure those rights and protect them in their efforts to do so from reprisals of any kind from their would-be exploiters, manipulators, and bosses. Without such protection, other provisions of law may be of little benefit and meaningless. Without such protection in the exercise of his legitimate rights the records of our committee's investigations show over and over again that a rank-and-file member dare not risk any opposition to a corrupt or autocratic leadership. If he does so, he may be beaten, his family threatened, his property destroyed or damaged, and he may be forced out of his job--all of these can happen and have happened.

Having these things in mind, . . . I introduced S. 1137 to provide a bill of rights for working people--for union members.

105 Cong. Rec. 6471-72 (emphasis added).

The Bill of Rights was therefore "designed to guarantee every member equal voting rights, rights of free speech and assembly, and a right to sue." *Lynn, 488 U.S. at 352* (quoting *Steelworkers v. Sadlowski, 457 U.S. 102, 72 L. Ed. 2d 707, 102 S. Ct. 2339 (1982)).*

Between January and September of 1959, when the LMRDA was finally enacted, most of the debate concerned the new additions and amendments, "while the trusteeship title glided quietly through the labyrinthine process from bill to bill with little change and less discussion." See *Lynn, 488 U.S. at 357 n.8* (quoting Note, Trusteeship Imbroglio at 1475). Neither the discussions on the House nor Senate floors focused on the relationship between Title I and Title III. Id. Senator Dodd, however, did propose an amendment to Title III which sparked some debate. Specifically, Dodd wanted the trusteeship provisions to go even further in order to prevent the manipulation of the trusteeship power and the resulting harm that had been so well documented by the McClellan Committee. Note, Trusteeship Imbroglio at 1475-76. Dodd's amendment created a presumption that trusteeships in place longer than thirty days were invalid unless the international union, at a hearing before the Secretary of Labor, could present clear and convincing proof of a proper purpose. Id. Senator Dodd explained the rationale for his proposed amendment as follows:

> The [Kennedy-Ervin] bill now provides a procedure under which an individual union member may appeal. The point is that the full burden of proof is placed upon such union member, who thus would have to fight the international or the national union; and in that fight the limited, sparse, or -- most often -- nonexistent power of the individual union member would be pitted against the tremendous prestige and power of the national

> or the international union. . . . the philosophy behind my amendment is an old Anglo-American philosophy . . . that the burden of proof for so serious a matter as destroying a local union, or local union autonomy -- and that is what a trusteeship usually does -- should rest upon the national union seeking to impose the trusteeship.

105 Cong. Rec. at 6675.

Dodd then focused on the importance of protecting the local membership given organized crime's entanglement with certain elements of the labor movement as unearthed during the congressional inquiry. He explained:

> In the past, as we know from the revelations of the McClellan committee, and as we know from litigation, the imposition of trusteeships was one of the greatest abuses of the Teamsters Union. My recollection is that more than 120 trusteeships were imposed by that union some of them for more than 20 years. Think of it. For more than 20 years, the local members, the wage earners, were without any say at all with respect to their local unions.
>
> * * *
>
> All I seek by the amendment is to give the members of a local union an opportunity to say to someone, a judge, or other competent authority, 'This trusteeship should not be imposed on us.'

Id. (emphasis added).

Senator Ervin opposed Dodd's amendment. Ervin argued "the bill as now drawn furnishes adequate protection for the rank and file of members of unions which are placed in trusteeship."[13] Id. at 6677. Additionally, Senator Morse argued:

> We should look at the trustee section of the bill as it comes to us in the light of the other sections of the bill, and note what the committee has done by way of setting up democratic procedures to protect the rank and file of the local unions. As we provide democratic guarantees in the bill, I believe we should keep at a minimum any interference with the operation of the internal affairs of the union.=I

Lynn, 488 U.S. at 357 n. 8 (quoting 105 Cong. Rec. 6678). Dodd's amendment was subsequently rejected.

When the Kennedy-Ervin Bill went to the House, the enforcement section of the trusteeship title was changed.[14] The Kennedy-Ervin Bill did not grant individual union members standing to bring suit in federal court. The Committee Report accompanying the bill explained that "section 206 makes clear that Federal suits under Title II are possible only upon suit initiated by the Secretary of Labor." U.S. Code Cong. & Admin. News 1959, p. 2363. The enforcement section which Congress passed, and which is still in force, allows the local union itself or an individual union member to bring suit in federal court. See 73 Stat. 519 § , *29 U.S.C. § 464.*

The legislative history is silent on the issue of whether a union member, as an appointed officer, may seek individual damages. However, Congressman Ludwig Teller offered supplementary views regarding the reasoning behind the amendment of the enforcement section. Teller explained that

Congress wanted to facilitate individual claims without any involvement by the Secretary. U.S. Code Cong. & Admin. News 1959, p. 2500. This allowed Congress to curtail the inordinate power of the Secretary while saving taxpayer dollars and eliminating any requirement that a union member first obtain governmental permission to sue.[15] Id.

This expansive discussion of legislative history does not conclusively establish what type of relief is "appropriate" for an individual union member who is also an appointed official. However, it places that inquiry into its proper context and guides our interpretation of the relevant statutory language. In interpreting Title III in the context of the discussions in Congress and the findings of the McClellan Committee, we conclude that the amendment authorizing individual law suits was intended to underscore the concerns surrounding trusteeships under Title III. By allowing individual members to bring suit rather than the Secretary, Congress intended more avenues for enforcement of the trusteeship provision, not more types of relief.

Nothing in the legislative history of Title III suggests that Congress contemplated an individual bringing suit for compensatory damages arising from the loss of an appointed union position under that title. The statutory scheme of the LMRDA strongly suggests that the individual rights that Ross seeks to vindicate must be redressed under Title I. As noted above, that provision was initially referred to as the "workers' bill of rights" when it was introduced. Title III, which came first, was meant to protect the subordinate labor organization, and Title I was subsequently added specifically to address the rights of individual union members. Accordingly, we conclude from the legislative history that the relief that Ross seeks is not "appropriate" under Title III. An examination of the relevant cases confirms this conclusion.

D. Applicable Case Law

We have not previously interpreted § 304, the enforcement provision of *Title III. However, Finnegan v. Leu, 456 U.S. 431, 72 L. Ed. 2d 239, 102 S. Ct. 1867 (1982),* and its progeny guide our analysis. In Finnegan, Leu defeated Brown in an election for president of Local 20 of the International Brotherhood of the Teamsters. *Id. at 433.* Brown had been openly supported by a group of the local's business agents including Finnegan. Id. After Leu assumed office, he discharged all of the business agents who had supported Brown pursuant to a provision in the local's bylaws that purported to give the president the "authority to appoint, . . and discharge the Union's business agents." *Id. at 433.* The business agents then sued in district court contending that their termination violated Title I of the LMRDA.[16] Id.

The Court began its analysis by reviewing the legislative history of the LMRDA, and concluding that "the Act's primary objective [was] ensuring that unions would be democratically governed and responsive to the will of their memberships." Id. The Court noted that "it is readily apparent from the legislative history of Title I, that it was rank-and-file union members--not union officers or employees, as such--whom Congress sought to protect." *Id. at 437.* The plaintiffs were members of the union with protected speech rights, as well as salaried employees of the union. Accordingly, the Court had to determine whether the rights afforded plaintiffs as members of the union "immunized [them] from discharge at the pleasure of the president from their positions as appointed union employees." Id.

The Court concluded that the plaintiffs' Title I rights had not been violated because plaintiffs had not been precluded from exercising any of those rights, and the LMRDA did not protect appointed officers who "backed the wrong horse." This was true even if it meant that those officers were "forced to 'choose between their rights of free expression . . . and

their jobs.' " Id. (citations omitted). The Court explained its rejection of plaintiffs' Title I claim as follows:

> For whatever limits Title I places on a union's authority to utilize dismissal from union office as 'part of a purposeful and deliberate attempt . . . to suppress dissent within the union,' (citations omitted), it does not restrict the freedom of an elected union leader to choose a staff whose views are compatible with his own. Indeed, neither the language nor legislative history of the Act suggest that it was intended to address the issue of union patronage. To the contrary, the Act's overriding objective was to ensure that unions would be democratically governed, and responsive to the will of the union membership as expressed in open, periodic elections.

Id. at 441.

Here, Ross also held the "dual status" of union member and appointed union officer. Defendants argue that because Ross was employed during the entire time the trusteeship was in place, Finnegan precludes him from asserting a claim "arising from the decision of the newly elected officers of Local 57 not to retain him as a business agent after the trusteeship ended." Defendants' Br. at 9. Defendants are correct that the newly elected officers of Local 57 were free "to choose a staff whose views are compatible with [their] own." *Finnegan, 456 U.S. at 441.*

However, the analysis does not end there because, unlike in Finnegan, we are here concerned with a trusteeship that was created pursuant to Title III. Ross argues he is entitled to compensation because the continuation of the Trusteeship was in bad faith and for the purpose of removing him as

political opposition within Local 57 in violation of § 304 of Title III.[17] The Supreme Court addressed a similar argument in the context of a trusteeship in *Sheet Metal Workers' International Ass'n v. Lynn, 488 U.S. 347, 102 L. Ed. 2d 700, 109 S. Ct. 639 (1989).*

There, the trustee who had been appointed to run the local asked Lynn, who was an elected business representative of Local 75, to support a proposed dues increase. However, rather than support the increase, Lynn insisted that expenditures be reduced and he organized the opposition to the proposal to raise union dues. *Id. at 349-50.* Five days after the proposal was defeated, the trustee informed Lynn that he was being removed from his elected position of business agent. *Id. at 350.* Lynn exhausted his administrative remedies within the union, and then filed suit under Title I alleging that his removal constituted illegal retaliation in violation of the statutory right of free speech set forth in § 101(a)(2) of the LMRDA. 73 Stat. 519 § 101(a)(2), *29 U.S.C. § 411*(a)(2).

The Court began its analysis by noting similarities between Lynn's plight, and the plight of the plaintiffs in Finnegan. The Court recalled that the Title I rights of the plaintiffs in Finnegan had been chilled "albeit indirectly, because [they] had been forced to choose between their rights and their jobs." *Id., at 354.* Nevertheless, the Finnegan plaintiffs had not recovered because the choice that they were left with did not violate the purpose of the LMRDA.

> Whether such interference with Title I rights gives rise to a cause of action under § 102 must be judged by reference to the LMRDA's basic objective: "to ensure that unions [are] democratically governed, and responsive to the will of the union membership as expressed in open, periodic elections." In Finnegan, this

> goal was furthered when the newly elected union president discharged the appointed staff of the ousted incumbent. Indeed, the basis for the Finnegan holding was the recognition that the newly elected president's victory might be rendered meaningless if a disloyal staff were able to thwart the implementation of his programs. While such patronage-related discharges had some chilling effect on the free speech rights of the business agents, we found this concern outweighed by the need to vindicate the democratic choice made by the union electorate.

488 U.S. at 354-5 (citations omitted). However, the Court stressed that Lynn's situation was quite different for he was removed from an elected position, and his removal thereby had a direct impact on the democratic governance of the union itself.

> The consequences of the removal of an elected official are much different. To begin with, when an elected official like Lynn is removed from his post, the union members are denied the representative of their choice. Indeed, Lynn's removal deprived the membership of his leadership, knowledge, and advice at a critical time for the Local. His removal, therefore, hardly was an integral part of ensuring a union administration's responsiveness to the mandate of the union election.
>
> Furthermore, the potential chilling effect on Title I free speech rights is more pronounced when elected officials are discharged. Not only is the fired official likely

> to be chilled in the exercise of his own free speech rights, but so are the members who voted for him. Seeing Lynn removed from his post just five days after he led the fight to defeat yet another dues increase proposal, other members of the Local may well have concluded that one challenged the union's hierarchy, if at all, at one's peril. This is precisely what Congress sought to prevent when it passed the LMRDA. "It recognized that democracy would be assured only if union members are free to discuss union policies and criticize the leadership without fear of reprisal."

Id. at 355. Accordingly, the Court held that Lynn's allegation of retaliatory removal stated a cause of action under Title I of the LMRDA.

Ross was appointed and his complaint alleges only a violation of Title III.[18] The Court in Lynn was quite explicit in tying Lynn's cause of action to Title I. The Court emphasized the importance of Title I as follows:

> we find nothing in the language of the LMRDA or its legislative history to suggest that Congress intended Title I rights to fall by the wayside whenever a trusteeship is imposed. Had Congress contemplated such a result, we would expect to find some discussion of it in the text of the LMRDA or its legislative history. Given Congress' silence on this point, a trustee's authority under Title III ordinarily should be construed in a manner consistent with the protections provided in Title I.

Id. at 356-57.

Title I was enacted to protect rank-and-file members of the union and to insure union democracy by protecting the independence of elected union officials even though the free speech rights of the union's membership are implicated. This is true whether or not a trusteeship is involved. Ross tries to avail himself of the holding in Lynn by arguing that his removal has an impact on the democratic governance of the Local.[19] He seems to be arguing that Title III was the mechanism by which his free speech rights (i.e., Title I) were violated. However, the rights that may have been chilled are nevertheless Title I rights, not Title III rights. Therefore, the holding in Lynn does not further his position. "The potential chilling effect on Title I free speech rights is more pronounced when elected officials are discharged. Not only is the fired official likely to be chilled in the exercise of his own free speech rights, but so are the members who voted for him." *Id. at 355.* We are not persuaded by Ross' attempts to secure compensation for a claimed violation of Title I under Title III. His position is, in fact, in substantial tension with Finnegan. After all, in Finnegan, the Court allowed an appointed officer to be removed even though doing so required employees to chose between free speech and continued employment. The Court reasoned that choice was necessarily concomitant to allowing elected officials to implement the programs and leadership that a majority of the union membership had voted for. Although there was no issue of a trusteeship in Finnegan, it is very difficult to square that analysis with Ross' assertion that he has a cause of action because of the Trusteeship here.

As the Supreme Court found in the Title I setting, nothing in the legislative history of Title III establishes that Congress intended to protect appointed officers like Ross under the circumstances here. Ross' reliance upon Title III may well be an attempt to circumvent the holding in Finnegan. But for the existence of the Trusteeship and the fact that Ross brought

this suit under Title III, Finnegan would be more precisely on point. Ross' claim that he was victimized by an appointed Trustee rather than an elected officer does not alter the fact that the rights he seeks to vindicate are Title I rights, not Title III rights. Accordingly, we believe our analysis here must still be guided by Finnegan, and that is confirmed by our reading of *Gesink v. Grand Lodge, International Ass'n of Machinists and Aerospace Workers, 831 F.2d 214, 216 (10th Cir. 1987).*

In Gesink, the International appointed a trustee who subsequently filed charges against Gesink, a business representative for the local. *Id. at 215.* Gesink was thereafter removed from his office by the president of the International, and he was barred from holding any office for five years. Id. Gesink sued for damages under Title I and Title III. His claim for damages under Title III was based upon his assertion that he was entitled to relief for deprivation of his salary and other emoluments of his office during the Grand Lodge supervision of the District Lodge. He argued that the supervision violated Title III of the LMRDA. *Id. at 216.* The Court dismissed his Title III claim stating:

> In light of the legislative history of Title III of the LMRDA and the Supreme Court's ruling in Finnegan, this Court finds that there is no cause of action for individual damages under § § 462 and 464. Any right of action pursuant to those sections belongs to the subordinate union, while a union member may sue to enforce the act's provisions, such suits should be limited to relief on behalf of the union. As the Supreme Court concluded in the Title I context, this Court concludes that nothing in the legislative history of Title III indicates an intent to protect the positions of union officers and employees.

Id., at 216. Similarly, in Pope v. Office and Professional Employees International Union, the court stated: "Title III of the LMRDA is designed to protect a subordinate union as a whole, whereas Title I . . . is designed to protect the individual rights of the members of a union." *74 F.3d 1492, 1504,* (6th Cir. 1996).

The district court here found that Ross is not seeking compensatory damages and reinstatement in order to protect the local union and its membership from the actions of the Trustee. Rather, the court concluded that Ross sought relief to redress personal losses purportedly inflicted upon him by the Trustee. Ross v. Hotel Employees and Restaurant Employees Int'l Union, No. 98-1131, slip. op. at 16-17 (W.D. Pa. Oct. 4, 1999). His efforts to now argue that his relief will benefit the union by vindicating its members' free speech rights is little more than a belated attempt to import considerations that govern Title I relief into a suit brought only under Title III.

Despite the holding in Finnegan, Lynn, and Gesink, Ross urges that we be guided by *Higgins v. Harden, 644 F.2d 1348 (9th Cir. 1981).* There, the International Association of Machinists ("IAM") appointed Simpson and Harden to exercise control over a local for which Higgins was an organizer. Thereafter, Harden attempted to remove Higgins from his position as organizer by claiming that Higgins had been unproductive. Higgins responded by suing under § § 101-611 of the LMRDA, *29 U.S.C. § § 401*-531. He alleged that the IAM had imposed an unlawful trusteeship in the form of Simpson and Harden, that those trustees were without authority to terminate him, and that his termination had actually been in retaliation for his political support of the directing business representative of the local who had apparently fallen into disfavor with the International, and been "forced out" by Harden. Id.

The district court held that the International had, in fact, established a trusteeship. That trusteeship was declared invalid because the International had not complied with IAM's own constitution and bylaws. Accordingly, the court held that Harden did not have the authority to remove Higgins, and Higgins was awarded back-pay and attorney's fees. Id. The court of appeals affirmed that part of the district court's opinion. However, the court of appeals merely assumed that the requested individual relief was "appropriate" under Title III.

We decline to embrace Higgins for several reasons. Although the court there assumed that an individual right of action exists, under Title III, it did not directly address the issue. See *Gesink, 831 F.2d at 216* (finding that the Higgins court "apparently assumes there is an individual right of action . . . but . . . does not discuss the issue"). It never analyzed the legislative history that Finnegan and Lynn instruct is so important to a proper inquiry. Moreover, Higgins was decided before Finnegan and Lynn, and the Higgins court therefore did not have the benefit of the Supreme Court's discussion of the LMRDA contained in those later cases.

Ross also urges reliance on *McDonald v. Oliver, 525 F.2d 1217 (5th Cir. 1976)*. In McDonald, new elections were held after a trusteeship was established, but the International invalidated the election results and refused to install the new officers. *Id. at 1222-23.* The newly elected officers brought suit under Titles I and III seeking to end the trusteeship; and win installation as officers, and back-pay. Id. The Secretary also brought an action under Titles III and IV based on a finding by a Labor Department official that the continuation of the trusteeship and the failure to recognize the election violated Titles III and IV of the LMRDA. *Id. at 1224.* The district court declared that the election was valid, ordered the immediate installation of the officers, and awarded back pay. *Id. at 1225.* The Court of Appeals affirmed, reasoning that:

> although the primary purpose of an individual's lawsuit is obviously to vindicate his own rights or facilitate his own candidacy, there can be little doubt that he renders a substantial service to the union as an institution and to his members individually in protecting local democratic processes through Titles I and III. The successful litigant dispels the "chill" cast upon the rights of others.

Id. at 1227. The court also concluded that Title III should be "construed in light of the various other provisions of the LMRDA." *Id. at 1229.* The court recognized that the primary purpose of the LMRDA is "not only to stop and prevent outrageous conduct by thugs and gangsters but also to stop lesser forms of objectionable conduct by those in positions of trust and to protect democratic processes within union organizations." Id. The court concluded by finding that the international union was thwarting union democracy in violation to the LMRDA.

Although McDonald suggests that a successful suit under Title III confers benefits on the entire union membership, the holding does not advance Ross' argument as much as he would like because McDonald was also decided before Finnegan and Lynn. Moreover, McDonald was elected and Ross was appointed. The decisions in Finnegan and Lynn readily establish the importance of that distinction and undermine McDonald as support for Ross' action under Title III.

Similarly, we find that Ross' reliance upon *Pruitt v. United Brotherhood of Carpenters and Joiners of America, 659 F. Supp. 1511 (N.D. Ga. 1987),* vacated on other gr'ds, *893 F.2d 1216 (11th Cir. 1990),* is misplaced because Pruitt too is distinguishable from the instant case. There, the court was not asked to find a private cause of action for damages under § 304 of Title III. Rather, Pruitt sued under both Title I

and Title III alleging that an appointed trustee had prevented him from assuming an elected position in retaliation for the exercise of free speech. *Id. at 1514.* The court discussed the statutory presumption of validity that attaches to trusteeships under § 304 of Title III in inquiring into whether the trusteeship in question had been imposed for a proper purpose. *Id. at 1517, 1520.* The issue addressed by the court was whether the "plaintiff's Title III claims fail as a matter of law under the clear and convincing evidence standard [of § 304]." *Id. at 1519.* The court merely ruled that "a triable issue may exist as to whether the trusteeship was maintained to block plaintiff from assuming his elected position" *Id. at 1520.* More importantly, Pruitt, unlike Ross, stated a Title I claim based upon his assertion that the trusteeship had precluded him from assuming an elected position. *Id. at 1522.*

Finally, Ross relies upon the decision of the Court of Appeals for the Sixth Circuit in *Pope v. Office and Professional Employees International Union, 74 F.3d 1492 (6th Cir. 1996).* Pope was an appointed business representative of Local 268 of the Office and Professional Employees International Union (OPEIU). Soon after his appointment, he alleged wrongdoing and mismanagement on the part of officers of Local 268. *Id. at 1496.* Support for Pope's outspoken criticism of the Local's leadership soon flourished, and he became a candidate for president of the Local despite opposition of the OPEIU, and local board. *Id. at 1497.* After one very chaotic meeting of the Local, the OPEIU granted the local board's request, and imposed a trusteeship to control Local 268 pending a hearing to determine its propriety. *Id. at 1498.* Thereafter, the union held a hearing and determined that the trusteeship was appropriate despite Pope's protestations to the contrary. Shortly thereafter, Pope was fired, and his union membership was withdrawn without notice or opportunity to be heard. *Id. at 1499.* Pope was therefore ineligible to run for president of

the Local. Elections were held, a new slate of officers was elected, and the trusteeship was thereafter terminated. *Id. at 1500.* However, before the trusteeship was terminated, Pope sued in district court.

Pope argued that the trusteeship violated Title III of the LMRDA, and that denying him eligibility to run for union office violated Title I of the LMRDA. Id. He sought monetary, declaratory and injunctive relief. However, after the elections took place the declaratory and injunctive claims were dismissed as moot. Id. The suit proceeded to trial, and the jury awarded Pope compensatory and punitive damages against the OPEIU. Id.

OPEIU appealed claiming that the LMRDA is designed to protect rank and file union members and not officers and employees and that Pope therefore lacked standing as an appointed employee. *Id. at 1501.* In resolving those issues, the Court reconciled the jury's verdict with the holdings in Finnegan, Lynn, and Gesink. The court also reconciled the jury's verdict with the holding in *Cehaich v. International, UAW, 710 F.2d 234 (6th Cir. 1983),* a case involving similar facts decided subsequent to Finnegan. Cehaich and Pope had both been appointed employees of local unions, but Cehaich's "status as a member of the union did not change after he was terminated from his appointed position. He was not fined, suspended, expelled or disciplined." *Pope, 74 F.3d at 1502.* The court reasoned as follows:

> In Finnegan, the appointed officials of an ousted board were not protected by the LMRDA because union members elected a new board. In Lynn, the elected officials were protected because they had been elected by the union members. The purpose of ensuring democracy is furthered by allowing Pope a cause of action under the LMRDA. Pope was

> appointed a business representative by an elected local executive board. That board was not ousted as in Finnegan.
>
> Moreover, unlike Cehaich, Pope was expelled from union membership immediately after his termination from his position as business representative. Thus, Pope's case is clearly distinguishable from Cehaich. Pope is entitled to protection under the LMRDA because he was disciplined in a manner which affected his right to fully enjoy the rights and privileges of union membership.

Id. at 1503.

However, most significantly for our purposes, the court held that Pope's suit was not moot merely because the trusteeship had since been terminated. The court reached that result by reading Title I and Title III together and concluding that "the question of the propriety of the trusteeship is not moot because it has direct bearing on whether Pope's Title I rights were violated." Id. The violation of Title III supported Pope's claim for damages because "[his was] an action at law to recover damages for the suppression of Title I rights as a result of the imposition of a trusteeship." *Id. at 1505.*

However, Ross is not alleging a violation of Title I. He was not expelled from membership, and he was reinstated to his appointed position within 24 hours of being removed from it.[20] In reviewing the grant of summary judgment for the defendants here, we must assume that they denied Ross' eligibility to run for election solely to keep him from running in the election. Although a union member's right to seek elective office is protected under Title I, *Id. at 1503; Gesink, 831 F.2d at 217,* Ross seeks relief solely under § 304 of Title III. Based on the text and legislative history of Title III and the Supreme Court's decisions in Finnegan and Lynn, we

hold that Title III does not allow a private cause of action for individual damages flowing from the termination of an appointed employee. Relief under § 304 must be sought on behalf of the local union organization and the entire membership must reap the benefits.

Accordingly, we conclude that the district court properly determined that there was no genuine issue of material fact and that, on the record before it, Ross' Title III claim failed as a matter of law. The relief Ross seeks is simply not "appropriate" within the meaning of Title III.

IV. Conclusion

For the reasons set forth herein, we conclude that the district court did not err in granting summary judgment to the defendants under Title III of the LMRDA and that order will be affirmed.

Footnotes

[1] The procedural history of this appeal is rather unique as the district court entered summary judgment after declaring a mistrial.

[2] At all times relevant to the issues before us, Ross held an appointed office.

[3] Inasmuch as we are reviewing a grant of summary judgment against Ross, we must assume that the allegations of his amended complaint are true, and draw all inferences which reasonably arise from those assertions in his favor as the nonmoving party. *Woessner v. Air Liquide Inc., 242 F.3d 469, 471 (3d Cir. 2001).*

[4] Nancy Davis is also referred to as Nancy Ross in the record, as she is George Ross' former wife.

[5] Carol Carlson was appointed as co-trustee about four weeks later.

[6] Ross argues that Nassan "cut a deal" with HEREIU and the Trustees to dissolve the Trusteeship, and hold elections in exchange for Nassan withdrawing from the lawsuit and his support of Ross.

[7] In support of this argument, he points out that he had been elected to the Executive Board of Local 57 on three prior occasions even though his dues were then delinquent. Inasmuch as we are reviewing a grant of summary judgment, we must accept this argument as true.

[8] The district court also discussed Ross' repeated attempts to invalidate the August 1998 election despite its previous ruling that Ross was barred from seeking to effect a change in the election. The district court reaffirmed its previous ruling that it lacked jurisdiction to entertain this part of Ross' claim. Ross v. Hotel Employees and Restaurant Employees Int'l Union, No. 98-1131 slip. op. at 7-8 (W.D. Pa. Jan. 12, 2000). The court reasoned that Title IV of the LMRDA vests the Secretary of Labor with exclusive jurisdiction over an individual union member's post-election suits regardless of when members first seek relief regarding elections. See id. at 8-10 (citing *Local No. 82, Furniture & Piano Moving, Furniture Store Drivers, Helpers, Warehousemen & Packers v. Crowley, 467 U.S. 526, 541, 544, 81 L. Ed. 2d 457, 104 S. Ct. 2557 (1984)).* Post-election relief to invalidate elections or seek new elections must first be pursued with the Secretary of Labor. Id. at 11 n. 2. Therefore, Ross "[was] barred from pursuing claims requiring an invalidation of the August 1998

election." Id. at 10-11.

[9] Ross does not now challenge the district court's denial of his assertion that the law of the case precluded entry of summary judgment, or the district court's refusal to overturn the union's election.

[10] Title III of the LMRDA provides in relevant part:

> § 302 Purposes for which a trusteeship may be established
>
> Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization.
>
> § 303 Unlawful acts relating to labor organization under trusteeship
>
> (a) During any period when a subordinate body of a labor organization is in trusteeship, it shall be unlawful (1) to count the vote of delegates from such body in any convention or election of officers of the labor organization unless the delegates have been chosen by

secret ballot in an election in which all the members in good standing of such subordinate body were eligible to participate . . .

* * *

§ 304 Enforcement

(a) Upon the written complaint of any member or subordinate body of a labor organization alleging that such organization has violated the provisions of this title (except section 301) the Secretary shall investigate the complaint and if the Secretary finds probable cause to believe that such violation has occurred and has not been remedied he shall, without disclosing the identity of the complainant, bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate. Any member or subordinate body of a labor organization affected by any violation of this title (except section 301) may bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate.

* * *

(c) In any proceeding pursuant to this section a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing . . . shall be presumed valid for a period of

> eighteen months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under section 302. After the expiration of eighteen months the trusteeship shall be presumed invalid in any such proceeding and its discontinuance shall be decreed unless the labor organization shall show by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under section 302. In the latter event the court may dismiss the complaint or retain jurisdiction of the cause on such conditions and for such period as it deems appropriate.

73 Stat. 519 § § 301, 302, 303, 304, *29 U.S.C. § § 461,* 462, 463, 464.

[11] At oral argument, and vaguely in his brief, Ross argued that we should read the enforcement section of Title III in light of § 401 which is the introduction section of the LMRDA and discusses the purposes and policy of the LMRDA. § 401(b) discusses protecting the rights of employees and the public in general:

> The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct

> which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.

73 Stat. 519 § 2(b), *29 U.S.C. § 401*(b). Ross contends that this section's use of the word "employees" indicates that protecting employees of the union was the underlying purpose of the LMRDA. For reasons we discuss below, we disagree.

[12] A review of the Senate Report no. 187, April 14, 1959 [To accompany S. 1555] in the Section-By-Section Analysis reveals that Title I was originally the reporting provision and Title II was the trusteeship provision. U.S. Code Cong. & Admin. News at 2352 - 2362. Later, Title I became the Bill of Rights provision, Title II became the reporting provision and Title III became the trusteeship provision. 73 Stat. 519 § 1 et seq., *29 U.S.C. § 401* et seq.

[13] Part of Ervin's discussion specifically explained that the bill "takes care of the main reason why trusteeships are sometimes arbitrarily imposed, namely, to enable international officers to control the selection of delegates to international conventions. The bill contains a specific provision to the effect that the local union in trusteeship may be represented at an international convention only by delegates elected by a secret ballot of the members of the local." 105 Cong. Rec. 6677.

[14] The enforcement provision currently in force is § 304 of the LMRDA, *29 U.S.C. § 464*.

[15] Congressman Teller stated:

> HR 8342 is a substantial improvement over S. 1555 (the Kennedy-Ervin bill), the Senate-passed labor management reform bill which our committee used as a basis for its deliberations . . . . Reducing the excessive powers of the Secretary of Labor, as we did in our committee bill H.R. 8342, is in line with our traditions which favor the diffusion of power, will save the taxpayer many millions of dollars annually without impairing the basic objectives of the proposed law, and will permit individuals to prosecute their own cases in the courts without having to obtain permission of a Government agent or official to do so.

U.S. Code Cong. & Admin. News 1959, p. 2500.

[16] The suit was filed under LMRDA § § 101(a)(1) and (2) which "guarantee equal voting rights, and rights of speech and assembly, to 'every member of a labor organization.'" *Id. at 436* (quoting *29 U.S.C. § 411* (1998)).

[17] There is some confusion about Ross' position regarding whether the Trusteeship was appropriately created and/or maintained. Defendants quote Ross as having conceded that the Trusteeship "was appropriate and was imposed for a proper purpose." See Defendants' Br. at 2. However, we do not interpret Ross' testimony as a concession. Rather, he was asked if he was aware of the serious charges facing the officers of the union and whether such serious charges justify establishing a Trusteeship. He responded, "well, according to the International, that's the way they feel. But, I think we

should have been spoke [sic] to first. . . . I do believe that is a valid reason for an International to come in and take over." App. at 250. Ross did not necessarily concede, however, that the actual motivation for taking over was the justification asserted by the International. Moreover, even if he may have conceded the Trusteeship was established for a legitimate purpose, he clearly insists that it was maintained for an improper purpose, and that he has a cause of action under Title III as a result.

[18] Ross' brief states:

> As a result of the improper use of a trusteeship, Ross suffered direct or proximate damages. But for the imposition of the trusteeship, Ross still would be employed. Since the trusteeship was intended for an improper purpose and maintained in bad faith, the Defendants violated the LMRDA. Ross, as a member of Local 57, was "affected" by the violation of the LMRDA. The damages requested were "appropriate" to make him whole.

Ross' Brief at 23 (emphasis added).

[19] Ross' brief states:

> The actions of the International Union will have also a chilling affect on all members of Local 57. If the International Union succeeds in destroying Ross and leaving him with no recourse, then other members will refrain from opposing the International Union. On the other hand, if the International Union is required to

> defend Ross' action and to compensate him for its misuse of the trusteeship, then the International Union will think twice before using a trusteeship as a means to harm one of its members. In this respect, Ross' actions benefit all members and inure to the benefit of the 'subordinate body of a labor organization' in addition to himself.

Ross' brief at 23 (emphasis added).

[20] We do not suggest that a union member must be stripped of his/her union membership to state a cause of action under Title I or that prompt reappointment will always insulate a defendant from claims of retaliation. However, we do note that Ross does not argue that his termination as an appointed officer was a scheme to suppress his freedom of speech and assembly as a union member under Title I.

CIVIL ACTION NO. 98-1131

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

GEORGE ROSS,
Plaintiff
vs

HOTEL EMPLOYEES AND RESTAURANT
EMPLOYEES INTERNATIONAL UNION,
ROBERT BAKER, CO-TRUSTEE, and
CAROL CARLSON, CO-TRUSTEE,
Defendant

October 4, 1999, Decided

SUBSEQUENT HISTORY:
subsequent app at *Ross v. Hotel Emples. & Rest. Emples. Int'l Union, 2001 U.S. App. LEXIS 20652* (3rd Cir., Sept. 17, 2001)

DISPOSITION:
Defendants' motion in limine was denied.

COUNSEL:
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For EDWARD NASSAN, DARREL BROWN, consolidated plaintiffs: Thomas M. Castello, Plunkett & Cooney, Pittsburgh, PA.

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For ROBERT BAKER, CO-TRUSTEE, CAROL CARLSON, CO-TRUSTEE, defendants: Joseph J. Pass, Robert A. Eberle, Jubelirer, Pass & Intrieri, Pittsburgh, PA.

For LOCAL 57 OF THE HOTEL EMPLOYEES AND RESTAURANT EMPLOYEES INTERNATIONAL UNION, consolidated defendant: Terry K. Leckman, Lipsitz, Nassau, Schwartz & Leckman, Pittsburgh, PA.

JUDGES:
FRANCIS X. CAIAZZA, U.S. Magistrate Judge.

OPINION BY:
FRANCIS X. CAIAZZA

OPINION:

Before the court for resolution is the Defendants' Motion in Limine. In their motion the Defendants request the court to enter an order which bars the Plaintiff "from offering any evidence or argument regarding his claim that he was improperly disqualified as a candidate for election to union office in August, 1998." *See* Defs.' Mot. in Limine at 1. Before reaching the merits of the Defendants' motion some comment on the history of this case is required.

The Plaintiff George Ross (Ross) along with Edward Nassan (Nassan) and Darrel Brown (Brown), commenced an

action against the Defendants in which they requested the court to "dissolve [a] Trusteeship created January 6, 1998, reinstate the Constitution and By-laws of Local 57, appoint Edward Nassan as temporary President pending elections, order the immediate elections of officers and assess counsel fees and costs against the Defendants." *See* Compl. Wherefore Clause.[1] The action was filed in this court at 98-629 on April 6, 1998. Next, Ross filed a Motion to Amend Complaint on January 19, 1999. The court directed the Defendants to respond to the Plaintiff's motion by February 1, 1999 in an order dated January 20, 1999. The Defendants failed to respond to the Plaintiff's motion and by order dated February 5, 1999 the Plaintiff was granted the right to file an Amended Complaint. In his Amended Complaint the Plaintiff requests that the court void the suspension of the Local 57 By-Laws and Constitution as well as his employment termination as a business agent. He also requests that the court void the following action: (1) the imposition of the new eligibility requirements for elective office and (2) the July, 1998 election. Finally, he requests an order which directs Local 57 to schedule new elections in accordance with its 1994 By-Laws and Constitution. *See* Am. Compl., Wherefore Clause.

Next, Ross filed an action in the Court of Common Pleas of Allegheny County, Pennsylvania at No. GD98-10468 on June 26, 1998. That action was removed to this court on June 26, 1998 and is filed at 98-1131. In the latter action the Plaintiff requests that the court declare him eligible to be nominated for general office and that he "be included as an eligible candidate for any and all offices to be chosen by the election of July, 1998." *See* Compl.. Wherefore Clause. Parenthetically, by order dated July 7, 1999 both actions were consolidated pursuant to Federal Rule of Civil Procedure 42(a), with all future filings to be docketed at the Civil Action Number 98-1131.

The resolution of the Defendants' Motion in Limine requires an examination of the provisions of *29 U.S.C. § 483* as well as the relationship between Title I, Title III and Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), *29 U.S.C. § 401, et seq.*

Title *29 U.S.C. § 483* provides that "existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections *prior to the conduct thereof* shall not be affected by the provisions of this subchapter." (emphasis provided). Title I of the LMRDA is the union members 'Bill of Rights.' Its terms provide union members with the right to vote, to participate in union decisions, to meet freely and to be protected against improper disciplinary action. *29 U.S.C. § 411.* Title III provides union members with the right to commence a civil action if any labor organization violates any "provisions of this subchapter." *29 U.S.C. § 464.* That section is pertinent to this action because it serves as the jurisdictional basis of the action filed at Civil Action 98-629. *See* Compl. P 8. In this lawsuit the Plaintiff has alleged that a trusteeship has been improperly established. *See 29 U.S.C. § § 462* and 464(c). Title IV regulates elections for union offices. *29 U.S.C. § 482.*

The law is clear that Title IV election rights are not enforceable through a post-election private suit. *See Calhoon v. Harvey, 379 U.S. 134, 13 L. Ed. 2d 190, 85 S. Ct. 292 (1964).* In that regard, an action which raises election challenges must be commenced by the Secretary of Labor. *See 29 U.S.C. § 482.* The court must determine, then, whether this consolidated action is basically a post-election suit which seeks judicial relief relative to the completed election or a pre-election action.

The sequence of the election process is this. On or about June 15, 1998, the General President issued instructions for the election of officers to commence with nominations on

July 1, 1998 followed by elections on July 10, 1998. The ballots were counted on August 10, 1998.

Here, the original Complaint in the action at 98-629 was filed on April 6, 1998 and it requested no particular relief relative to any pending election but instead sought relief which related to the dissolution of the trusteeship.[2] In this action the Plaintiff also sought injunctive relief which again related to the creation of the trusteeship. That motion was denied on April 9, 1998. Subsequent to the election, the Plaintiff was granted the right to file an Amended Complaint by order dated February 5, 1999. In the Amended Complaint the Plaintiff sought very specific relief relative to a completed election.

The action at 98-1131 was filed in state court on June 26, 1998; it was removed to this court on June 29, 1998. It sought specific relief relative to an uncompleted election. Apparently because of the ensuing election the Plaintiff filed a Petition For Temporary Restraining Order on June 29, 1998. In the petition he alleged that he had "reason to believe that he would be declared ineligible to be a candidate for any local elected office ..." (Pet. P 6), that the "defendants refuse to confirm or deny Plaintiff's eligibility ..." (Pet. P 4), that "without this court's intervention [the] Plaintiff will be irreparably harmed ..." (Pet. § 14) and that "without this court's intervention [the] Plaintiff has no adequate remedy at law ..." (Pet. P 17). By oral order the court denied the Plaintiff's request for a temporary restraining order on June 29, 1998. The Plaintiff was declared ineligible and the election was held in the sequence described *supra*.

A review of those dates reveals that, in somewhat of a hybrid fashion, the Plaintiff filed both a post-election and preelection suit in which he sought judicial relief relative to an election. Nevertheless, even if the court finds that this is essentially a post-election action the Plaintiff may be permitted to present evidence which relates to the election

process in an action in which he seeks only monetary relief because the United States Court of Appeals for the Third Circuit has stated that "the rather broad language of the Calhoon decision could not be considered to have precluded Title I suits related to election matters." *See Amalgamated Clothing Workers of America Rank and File Committee v. Amalgamated Clothing Workers of America, Philadelphia, Joint Board, 473 F.2d 1303, 1306 (3d Cir. 1973)* (*citing* Union Elections and the LMRDA, *81 Yale L.J. 407, 546-547 (1972)*). The court went on to say that Calhoon did not prohibit "Title I suits in the election area [and that actions commenced] before an election which were intrinsically bound up with the election process have been permitted." *Id.* (*citing Semancik v. United Mine Workers of America, District No. 5, 466 F.2d 144 (C.A.3 1972); DePew v. Edmiston, 386 F.2d 710 (C.A. 1967); Sheridan v. United Brotherhood of Carpenters, 191 F. Supp. 347 (D.Del. 1961).* It does not appear, therefore, to be unreasonable to extend the court's reasoning at it relates to Title I actions to lawsuits which are based upon Title III of the LMRDA, such as the case filed at 98-629. Parenthetically, this court must recognize that "once the election has been completed, the outcome cannot be affected by [a] Title I suit. The judicial and administrative remedy of Title IV is exclusive." *Amalgamated Clothing, 473 F.3d at 1306.* For the same reason, following the completion of the election process, the outcome cannot be affected by a Title III case because of the exclusivity provisions of Title IV. Is that same conclusion applicable to cases filed pursuant to actions filed pursuant to the provisions of *29 U.S.C. § 483* where the action was filed but not decided prior to the election.

First, the Plaintiff's claim that he has no remedy is without merit. Following the election he maintained the right to seek relief pursuant to the enforcement provisions of the LMRDA. *See 29 U.S.C. § 482.*

Next, the action initially filed at 98-629 was filed prior to the election. However, it sought no specific relief relative to the election process and it was based upon *29 U.S.C. § 464,* which makes it a Title III action. Notably, the election issues raised in the Amended Complaint were filed post-election.

Next, the Plaintiff obviously filed the action at 98-1131, which involved the union's constitution and by-laws, "prior to the conduct" of the election. [It was filed in state court on June 26, 1998 and it was removed to this court on June, 29, 1998.] Immediately following the removal of the case to this court, District Court Judge Gary Lancaster held an expedient hearing on the request for a temporary restraining order and proceeded to deny the request of the Plaintiff which would have made him eligible to be nominated for a Local 57 office in the face of a close sequence of events; *viz.*, the motion for a temporary restraining order was denied on June 29, 1998, the nomination process commenced on July 1, 1998, the election was conducted on July, 10 1998, and ballots were counted on August 10, 1998. With this history in mind the court must resolve this question: whether the action at 98-1131 is a pre-election lawsuit which would provide this court with jurisdiction to grant the relief which the Plaintiff has requested.

First, the issues raised by the Plaintiff involves "the constitution and by-laws of a labor organization." In that regard, the Plaintiff claims that the trustees improperly added a provision to the election guidelines: *viz.*, that a perspective candidate could not be over sixty days delinquent in the payment of his dues at any time from May, 1997 through April, 1998 and that Article XII, Section Seven of the International Constitution provides that no new local by-laws can become effective until after the installation of new officers. It is this by-law which the Plaintiff seeks to enforce.

The provisions of *29 U.S.C. § 483* provide a union member with the right to "enforce" the constitution and by-

laws of a labor organization "prior to the conduct" of an election. In the view of this court, under the legislative scheme, if the union member is unable to enforce, *prior to the election*, the by-law which he or she challenges, then the Plaintiff must resort to the provisions of *29 U.S.C. § 482.* Here, the Plaintiff filed the action in state court at 98-1131 on June 26, 1998 and the case was removed to this court on June 29, 1998, at which time the court denied the Plaintiff's request for a temporary restraining order. Nominations for the elected offices then commenced on July 1, 1998, which effectively precluded the Plaintiff from enforcing the contested by-law prior to the election in his action which was filed pursuant to the provisions of *29 U.S.C. § 483.* Although the denial of the temporary restraining order did not finally determine the merits of the lawsuit, the completed election process effectively removed the jurisdiction of this court to grant the relief sought by the Plaintiff: *viz.*, to be declared eligible to be nominated for general office and to have his name included as an eligible candidate; in that respect, under the facts here this court has jurisdiction only in cases which are commenced by the Secretary of Labor. *See 29 U.S.C. § 482.*

The court realizes the subtle ways in which a union can stifle the nomination process by injecting onerous conditions late in the election process which severely limit the number of candidates who qualify for nomination. However, by statutory enactment [*29 U.S.C. § 482]* Congress has decided not to allow individuals to either block or delay union elections by privately filing Section IV lawsuits. *Cf. San Diego Building Trades Council Millmen's Union, Local 2020 v. Garmon, 359 U.S. 236, 3 L. Ed. 2d 775, 79 S. Ct. 773 (1959).*

The Defendants Motion in Limine will be denied in an accompanying order. However, the Plaintiff cannot seek any relief which would effect a change in the union election. He can, nevertheless, introduce evidence in his Section 464

action which shows that he was improperly disqualified as a candidate in the July, 1998 election.

October 4, 1999

FRANCIS X. CAIAZZA

U.S. Magistrate Judge

ORDER

In accordance with the provisions of the appended Opinion, the Defendants' Motion in Limine is denied.

October 4, 1999

FRANCIS X. CAIAZZA

U.S. Magistrate Judge

Footnotes

[1] Nassan and Brown have withdrawn from this action and are no longer parties to this lawsuit.

[2] For relief the Plaintiff requested that Edward Nassan be appointed as temporary President and that the court order the immediate election of officers.

Supreme Court, U.S.
FILED
JAN 25 2002
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No. 01-921

IN THE

Supreme Court of the United States

GEORGE A. ROSS,

Petitioner,

v.

HOTEL EMPLOYEES AND RESTAURANT EMPLOYEES INTERNATIONAL UNION; ROBERT BAKER, Co-Trustee; and CAROL CARLSON, Co-Trustee,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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IN THE

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GEORGE A. ROSS,

Petitioner,

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HOTEL EMPLOYEES AND RESTAURANT EMPLOYEES INTERNATIONAL UNION; ROBERT BAKER, Co-Trustee; and CAROL CARLSON, Co-Trustee,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE AND FACTS

Petitioner George Ross was, at all relevant times, employed at will as an appointed business agent for Local 57 of the Hotel Employees and Restaurant Employees International Union (hereinafter, "HEREIU"). Local 57 is located in Pittsburgh, Pennsylvania.

The HEREIU was a party to a Consent Decree with the United States which provided for the appointment of a federal monitor for the purpose, among others, of eliminating any organized crime influences in the HEREIU and its Local Unions. In November, 1997, the federal monitor recommended to the HEREIU President that a trusteeship be

imposed on Local 57 and the HEREIU President agreed. On January 6, 1998, pursuant to the HEREIU Constitution, a trustee was appointed and the officers of Local 57 were suspended. Ross admitted that the HEREIU had a proper purpose for imposing the trusteeship, testifying that "I do believe that that [the resignation of three officers for knowing association with organized crime figures] is a valid reason for an International to come in and take over."

Although Ross was initially fired by the trustee from his position as appointed business agent, he was reinstated within twenty-four (24) hours and continued to serve in that position for the remainder of the trusteeship. In light of his immediate reinstatement, Ross lost no wages, benefits, or other compensation.

When the trusteeship was terminated and new elections were planned, Ross sought to run for elected office. Ross was declared ineligible because he was delinquent in paying his dues. Ross did not dispute that he was delinquent in paying his dues. Local 57 bylaws limited candidates for office to members in good standing and provided for automatic suspension from membership of members who failed to pay their dues. As the U.S. Department of Labor has recognized, local unions have a legitimate interest in requiring persons who seek to hold union office to comply with bylaw provisions for the payment of dues. 29 C.F.R. § 452.37.

On August 10, 1998, the trusteeship was terminated and new elections were held. The new officers reduced the number of business agents from six to three and did not appoint Ross as a business agent. Ross admitted at trial that the new officers had no obligation to appoint him as a business agent.

Ross had filed two lawsuits, one challenging the trusteeship ("the trusteeship case") and one challenging the

election ("the election case"). The cases were consolidated. The only case appealed to the court of appeals was the trusteeship case and that is the case in which petitioner seeks a writ of certiorari.[1]

REASONS FOR DENYING THE WRIT

I. THE DECISION OF THE COURT OF APPEALS DOES NOT CONFLICT WITH DECISIONS OF OTHER COURTS OF APPEALS, DECISIONS OF STATE SUPREME COURTS, OR DECISIONS OF THIS COURT

Petitioner's argument, as articulated in the Petition, is simply that the decision of the Court of Appeals was incorrect. Petitioner identifies none of the considerations set forth in Supreme Court Rule 10 governing review on certiorari. None of those considerations are met in this case.

The decision of the court of appeals is not in conflict with the decision of any other court of appeals on the issue raised. (Rule 10(a)). In fact, the decision of the court of appeals is consistent with decisions of other courts on this issue, as noted by the court of appeals, citing *Gesink v. Grand Lodge, International Ass'n of Machinists and Aerospace Workers*, 831 F.2d 214 (10th Cir. 1987). (Pet. App. at 27a-28a).

Likewise, the decision of the court of appeals is not in conflict with the decision of a state court of last resort. (Rule 10(a)).

The decision of the court of appeals does not conflict with any relevant decision of this Court. (Rule 10(c)). In fact, as the court of appeals set forth at length in its decision, the decision reached is consistent with this Court's decisions

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[1] The petition states that the district court's opinion "dated January 12, 2000 is set forth in the Appendix, p.53a." (Petition at 1). The last page in the petition served on respondents is 51a and neither the petition nor the Appendix contains the referenced decision of the district court.

related to Title I of the Labor Management Reporting and Disclosure Act (hereinafter, LMRDA) in *Finnegan v. Leu*, 456 U.S. 431 (1982) and *Sheet Metal Workers' International Ass'n v. Lynn*, 488 U.S. 347 (1989). (Pet. App. 21a-27a).

Finally, the decision of the court of appeals does not involve an unsettled question of federal law which should be settled by this Court. (Rule 10(c)). The Tenth Circuit in *Gesink* and the Third Circuit in the pending case, with guidance from this Court's decisions in *Finnegan* and *Lynn* relating to the LMRDA, have settled the issue satisfactorily.

Accordingly, since none of the factors for consideration in granting a writ are present in this case, the writ should be denied.

II. THE COURT OF APPEALS CORRECTLY CONCLUDED THAT NO CLAIM FOR INDIVIDUAL DAMAGES WAS AVAILABLE PURSUANT TO TITLE III OF THE LMRDA.

The contention presented by Ross's petition is that the court of appeals incorrectly interpreted section 304 of the LMRDA, 29 U.S.C. § 464, by declining to reverse the district court's decision that Ross had no individual claim to pursue relating to the trusteeship.

Ross contends that "[s]ince the Defendants were using the trusteeship as a tool to harm Ross, he is entitled to be compensated for any losses sustained as the result of that misuse." (Petition at 7). However, Ross admitted at trial that he was immediately reinstated and that "I didn't lose any wages." Accordingly, the individual damages Ross seeks to recover by virtue of the individual cause of action he asks the Court to create are elusive. The "benefit" Ross apparently seeks is that permitting him to pursue his claim "will inure to the benefit of the entire membership by causing the International Union to fully consider the ramifications of its

actions in imposing trusteeships in the future." (Petition at 7-8). Such an amorphous basis for a claim can hardly give rise to standing under any statute, much less section 304.

The petition should be denied because the decision of the court of appeals was correct.

Section 304 provides in pertinent part that, in addition to permitting the Secretary of Labor to bring a civil action relating to a trusteeship, "[a]ny member or subordinate body of a labor organization affected by any violation of this title (except section 301) may bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate." 29 U.S.C. § 464(a). The court determined the question before it to be whether "the individual relief that Ross is seeking is 'appropriate' under Title III." (Pet. App. at 11a).

The court of appeals conducted an exhaustive review of the language and legislative history of the statute and concluded that "[b]y allowing individual members to bring suit rather than the Secretary, Congress intended more avenues for enforcement of the trusteeship provisions, not more types of relief." (Pet. App. at 20a). In addition, the court of appeals found no legislative history supporting an award of any particular relief to an appointed official such as Ross. (*Id.*).

> Nothing in the legislative history of Title III suggests that Congress contemplated an individual bringing suit for compensatory damages arising from the loss of an appointed union position under that title. The statutory scheme of the LMRDA strongly suggests that the individual rights that Ross seeks to vindicate must be redressed under Title I.

(*Id.*).

The court of appeals also found that the decisions of this Court relating to the rights of appointed officials under Title I

of the LMRDA were applicable in evaluating Ross's asserted right pursuant to Title III. The court noted that "the LMRDA did not protect appointed officers [such as Ross] who 'backed the wrong horse,'" (Pet. App. at 21a), and that, like the newly elected officers in *Finnegan v. Leu*, 456 U.S. 431 (1982), "the newly elected officers of Local 57 were free 'to choose a staff whose views were compatible with [their] own,'" (Pet. App. at 22a (citation omitted)). The court of appeals found Ross's position to be "in substantial tension with *Finnegan*" where the Court found that the appointed employee had no Title I claim because, as in this case, "that choice [of appointing officers] was necessarily concomitant to allowing elected officials to implement the programs and leadership that a majority of the union membership had voted for." (Pet. App. at 26a).

The court of appeals found that Ross's asserted Title III claim "may well be an attempt to circumvent the holding in *Finnegan*," and that "nothing in the legislative history of Title III establishes that Congress intended to protect appointed officers like Ross under the circumstances here." (Pet. App. at 26a). The court of appeals found that the rights Ross was seeking to vindicate were Title I rights. (Pet. App. at 27a).

The court of appeals distinguished this Court's decision in *Lynn* on the ground that "Lynn's situation was quite different for he was removed from an *elected* position, and his removal thereby had a direct impact on the democratic governance of the union itself." (Pet. App. at 24a (emphasis in original)). The court of appeals cited this Court's holding that "'a trustee's authority under Title III ordinarily should be construed in a manner consistent with the protections provided in Title I.'" (Pet. App. at 25a). Accordingly, since Ross, as an appointed business agent, had no claim under Title I, he had no claim under Title III.

The court of appeals endorsed the decision of the Tenth Circuit in *Gesink v. Grand Lodge, International Ass'n of*

Machinists and Aerospace Workers, 831 F.2d 214 (10th Cir. 1987), where the court dismissed a local union president's claim pursuant to Title III based on his removal during a trusteeship. The Tenth Circuit held that claims pursuant to Title III should be limited to relief on behalf of the union and that "nothing in the legislative history of Title III indicates an intent to protect the positions of union officers and employees." (Pet. App. at 27a). The court of appeals in this case also relied on the finding by the Sixth Circuit, in *Pope v. Office and Professional Employees International Union*, 74 F.3d 1492 (6th Cir. 1996) that "'Title III of the LMRDA is designed to protect a subordinate union as a whole, whereas Title I . . . is designed to protect the individual rights of the members of the union.'" (Pet. App. at 27a).

The court of appeals held that Ross's claim failed as a matter of law because "Title III does not allow a private cause of action for individual damages flowing from the termination of an appointed employee." (Pet. App. at 34a). The court pointed out that Ross "was not expelled from membership, and he was reinstated to his appointed position within 24 hours of being removed from it." (Pet. App. at 33a). The court of appeals emphasized that Ross did not allege a violation of Title I.

Ross attempts in his petition to distinguish *Finnegan* and *Lynn* as cases involving Title I issues. However, Ross's argument is grounded in neither the statute, the legislative history, nor common sense. There is no basis for concluding that an appointed business agent obtains enhanced status and rights to tenured employment, which he would not have under Title I, simply because a trusteeship is imposed. Since there is no legal basis for attributing an exalted legal status to Ross by virtue of the trusteeship, the courts should decline to legislate and establish rights and remedies where Congress had declined to do so.

The statutory language is clear. Section 304(a) permits a member to bring an action if he belongs to "a subordinate body of a labor organization affected by any violation of this title . . . ." 29 U.S.C. §464(a). The statutory language itself focuses on the effect of the violation on the labor organization and not on the individual member. Clearly, the cause of action created by the statute is in the nature of a derivative action on behalf of the labor organization for relief from the effect on the labor organization of the alleged violations of the trusteeship statutes. The statute provides the court with discretion to craft "appropriate" relief for the labor organization. There is no basis for concluding that an appointed business agent has a claim for individual damages arising from actions by the trustee acting within his powers as trustee.

The petitioner argues that the last sentence of section 304(a) permitting a member to bring an action on behalf of a labor organization affected by a violation of Title III is rendered superfluous by the court of appeals' decision. The petitioner argues that, if members only have rights pursuant to Title I, there is no reason for members to have a right to bring an action under Title III. To the contrary, the statute is very clear that members may bring an action pursuant to Title III ***on behalf of a labor organization*** that is affected by a violation of the trusteeship provisions. The action created by the statute is one brought by an individual member on behalf of the labor organization when the organization may not be able to assert its own rights because it is in the hands of a trustee, parent organization, or persons not sympathetic to the claimed violations of Title III. However, permitting a member to bring such a derivative action does not require the further assumption championed by petitioner that, therefore, a member ought to be permitted to bring an action for individual damages pursuant to Title III, an action not supported by the language, legislative history, or construction of the LMRDA.

The petition cites several cases from lower courts, all of which were distinguished by the court of appeals, and none of which support the petitioner's position.

The petition cites *Higgins v. Hardin*, 644 F.2d 1348 (9th Cir. 1981), in which a union organizer was discharged by the trustee after the international union had failed to follow the proper procedures in imposing the trusteeship. Higgins sued under both Title I and Title III and was awarded back pay. The court in *Higgins* never directly considered the standing of an individual plaintiff to recover under Title III only. The petition's own discussion of *Higgins* admits the equivocal basis for the *Higgins* court's decision, noting that "[f]rom the Court's opinion, it can be ***inferred*** that plaintiff was entitled to all compensatory damages arising from that improper act [imposition of the trusteeship]." (Petition at 11) (emphasis added)).

The court of appeals, following the Tenth Circuit's decision in *Gesink*, 831 F.2d at 216, distinguished *Higgins* on the ground that "[a]lthough the court there assumed that an individual right of action exists, under Title III, it did not directly address the issue." (Pet. App. at 29a). "It never analyzed the legislative history that *Finnegan* and *Lynn* instruct is so important to a proper inquiry. Moreover, *Higgins* was decided before *Finnegan* and *Lynn*, and the *Higgins* court therefore did not have the benefit of the Supreme Court's discussion of the LMRDA contained in those later cases." (*Id.*). *See also Gesink*, 831 F.2d at 216. In addition, *Higgins* is factually distinguishable from this case. Higgins was discharged ***by*** the trustee ***during*** the trusteeship. In this case, Ross was employed during the entire period of the trusteeship and only ceased employment after the newly elected officers decided not to re-appoint him as a business representative.

In *McDonald v. Oliver*, 525 F.2d 1217 (5th Cir.), *cert. denied, Local Union No. 795, Intern. Longshoremen's Ass'n*

v. McDonald, 429 U.S. 817 (1976), a trusteeship was imposed and a new election was held. However, the international refused to enforce the election results and install the officers. The newly elected officers brought suit under Titles I and III. The district court found the election valid and ordered the officers installed and awarded back-pay.

The court of appeals in this case found *McDonald* distinguishable because the relief obtained in that case, the installation of properly elected officers, "confers benefits on the entire union membership." (Pet. App. at 30a). Further, to the extent that Ross argued that *McDonald* supported a claim for individual damages, the court of appeals distinguished *McDonald* on the grounds that McDonald was elected while Ross was appointed, and that *McDonald* was decided prior to the decisions in *Finnegan* and *Lynn*. (*Id.*). "The decisions in *Finnegan* and *Lynn* readily establish the importance of that distinction [elected vs. appointed] and undermine *McDonald* as support for Ross' action under Title III." (*Id.*). Because Ross was an ***appointed*** representative, his employment was subject to the decision of the newly elected officers not to re-appoint him. That decision should be respected because it gives effect to the wishes of union members as expressed through their elected representatives.[2]

Petramale v. Local No. 17 of Laborer's International Union of North America, 671 F.Supp. 261 (S.D.N.Y. 1987), *rev'd in part*, 847 F.2d 1009 (2d Cir. 1988), cited in the

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[2] *McDonald* is further distinguishable because, in this case, the trusteeship lasted just seven months and was presumed valid pursuant to 29 U.S.C. § 464(c). In *McDonald*, to the contrary, the trusteeship was in place for more than two years prior to the election and was presumptively invalid, creating a prima facie violation of Title III.

Further, McDonald, the newly elected president, was deprived of his office during the pendency of the trusteeship. In this case, Ross was employed during the entire period of the trusteeship, which employment ceased only when the newly elected officers declined to re-appoint him.

petition, did not involve a trusteeship nor any aspect of Title III. *Petramale* involved an alleged violation of a member's free speech rights under Title I. *Petramale* provides no guidance regarding the availability of individual claims under Title III and is therefore irrelevant to the petition.

Pruitt v. United Brotherhood of Carpenters and Joiners of America, 659 F.Supp. 1511 (N.D. Ga. 1987), *vacated on other gr'ds*, 893 F.2d 1216 (11th Cir. 1990), cited in the petition, was distinguished by the court of appeals on the ground that "the court was not asked to find a private cause of action for damages under § 304 of Title III." (Pet. App. at 30a). Importantly, Pruitt stated a claim under Title I "based upon his assertion that the trusteeship had precluded him from assuming an ***elected*** position." (Pet. App. at 31a (emphasis added)). *Finnegan* and *Lynn* teach that the policies underlying the LMRDA justify treating elected and appointed officials differently in order to give effect to the legislative goal of fostering union democracy. The court of appeals noted that the district court in *Pruitt* only found that a triable issue existed regarding whether the trusteeship had been maintained to preclude Pruitt from assuming his elected office. (*Id.*).[3]

Pope v. Office and Professional Employees International Union, 74 F.3d 1492 (6th Cir.), *cert. denied*, 519 U.S. 993 (1996), cited by petitioner, is also distinguishable because in that case Pope's union membership was withdrawn without notice or opportunity to be heard. The court of appeals in *Pope* affirmed a verdict in his favor on the ground that Pope, although an appointed officer, had been deprived of his union membership during the trusteeship, thereby reconciling that

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[3] *Pruitt* is also distinguishable because, in that case, it was the ***trustee*** who denied Pruitt his elected office. In this case, petitioner was fully employed during the entire trusteeship and it was the decision of the ***newly elected officers*** that he not be re-appointed to his position after the trusteeship was dissolved.

case with the holdings in *Finnegan*, *Lynn*, and *Gesink*. The court of appeals in this case distinguished *Pope* because Pope alleged that a violation of his Title I rights occurred during the course of a trusteeship. (Pet. App. at 33a). "However, Ross is not alleging a violation of Title I. He was not expelled from membership, and he was reinstated to his appointed position within 24 hours of being removed from it. . . . Ross seeks relief solely under § 304 of Title III." (*Id.*). The court of appeals held:

> Based on the text and legislative history of Title III and the Supreme Court's decisions in *Finnegan* and *Lynn*, we hold that Title III does not allow a private cause of action for individual damages flowing from the termination of an appointed employee. Relief under § 304 must be sought on behalf of the local union organization and the entire membership must reap the benefits.

(Pet. App. at 33a-34a). *Pope* presents a classic Title I claim since Pope was stripped of his membership by the local union without due process. None of this occurred in this case. Ross never lost his membership rights. Accordingly, *Pope* does not support the petition.

Accordingly, since the court of appeals decision was correct on the facts of this case, the writ should be denied.

III. THE RECORD BELOW DOES NOT PROPERLY RAISE THE QUESTION SET FORTH IN THE PETITION.

The question presented in the petition is not properly raised by the record below. This case was decided on a motion for summary judgment, after the case had been tried, without result, to a jury. Accordingly, both the district court and the court of appeals had a complete factual record upon which to base their decisions and were not limited to the allegations of the amended complaint or the pleadings. The question presented in the petition is particularly inappropriate for con-

sideration because the factual assumptions in the question presented are not supported by the record.

First, petitioner Ross suffered no "damage" by virtue of the trusteeship. As petitioner Ross himself admits, he was immediately reinstated to his position as an appointed business agent, even before he filed suit, and continued in that position until the newly elected officers reduced the number of business agents from six to three and did not appoint Ross. Ross lost no time or compensation from his job as an appointed business agent, and, accordingly, has no tangible damages that might be the subject of a claim. Since there are no damages that might be the subject of an action to challenge the continuation of the trusteeship, the question of whether Title III of the LMRDA creates such an action in favor of a union member is hypothetical.

Second, Ross admits that there were adequate grounds for imposition of the trusteeship and only challenges the trusteeship's continuation during the period when it was presumed, by statute, to be valid. 29 U.S.C. § 464(c). The trusteeship in this case was imposed by the International Union at the suggestion of a court-appointed monitor pursuant to a Consent Decree, the purpose of which was to rid the local unions of organized crime influence. Ross admitted at trial that the resignations of the officers and the recommendation of the federal monitor provided adequate grounds for imposition of the trusteeship. In light of the fact that Ross suffered no damages from continuation of the trusteeship and admits that it was imposed for a proper purpose, the issue of whether an individual union member has a claim based on continuation of the trusteeship during the period when it is presumed valid is not a significant or substantial question.[4]

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[4] In the Question Presented for Review and throughout the petition, Ross characterizes the issue as whether he was harmed by "imposition" of

Third, the trusteeship lasted only six months and was terminated with new elections well within the eighteen months during which trusteeships are presumed valid by statute. Given the legal presumption in favor of validity, Ross's admitted lack of damages, and his admission that the trusteeship was imposed for a proper purpose, the question Ross submits for review is unsupported by the record, and is therefore a theoretical or hypothetical question which this Court ought not to agree to decide on these facts.

Fourth, the question presented by the petition is not supported by the record because Ross did not oppose the motion for summary judgment in the district court on the issue which he asks this Court to review. In the district court, Ross, in response to the summary judgment motion, contended that, since the case had previously proceeded to trial, the issue of his standing to bring a Title III claim should not be considered under the legal doctrine of the law of the case. Ross's reliance on the doctrine of the law of the case was rejected by the district court. Not until his appeal, did Ross attempt to defend his standing to bring the action. Although the court of appeals overlooked Ross's waiver of his challenge to the issues raised by the summary judgment motion because the case "raises a question of first impression in this

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the trusteeship. Noting Ross's admission that the trusteeship had been imposed for a proper purpose, *i.e.*, the removal of organized crime associations with the local, the court of appeals re-characterized the issue as a challenge to the maintenance of the trusteeship. At trial, Ross testified that "I do believe that [association of officers with members of organized crime] is a valid reason for an International to come in and take over." (Pet. App. at 41a n. 17). The court of appeals noted that "even if he may have conceded the Trusteeship was established for a legitimate purpose, he clearly insists that it was maintained for an improper purpose, and that he has a cause of action under Title III as a result." (*Id.*). This inconsistency between the issue decided by the court of appeals and the issue presented by Ross's petition further renders this case inappropriate for review.

circuit" (Pet. App. at 9a), the absence of a full and contested litigation of the issue at the district court level renders the question presented by the petition not properly presented for review.

Accordingly, for the reasons set forth above, the question presented by the petition for review is not properly presented based on the record in this case.

IV. PETITIONER'S DISQUALIFICATION AS A CANDIDATE FOR LOCAL UNION OFFICE IS NOT PROPERLY BEFORE THIS COURT.

The district court held that Ross's "election case" was barred because Title IV of the LMRDA provides that the exclusive remedy for challenging an election, including challenges to qualifications of candidates for office, is by complaint to the Secretary of Labor. This is consistent with the decisions of this Court. *See Calhoon v. Harvey*, 379 U.S. 134, 140 (1964). (Pet. App. at 35a n.8).

Ross did not raise this issue as an assignment of error in the court of appeals and does not include it in the question presented for review. (Pet. App. at 36a n. 9 ("Ross does not now challenge . . . the district court's refusal to overturn the union election.")). However, petitioner's brief is replete with conspiracy theories relating to the election and with references to his claim that his delinquency in paying dues was an improper ground for declaring him ineligible for office. Since the lower court held that Ross's claim was barred by the exclusive remedy provisions of Title IV and Ross failed to preserve any appeal from that decision, this issue is not properly before this Court despite Ross's repeated references to it in his petition. Ross may not evade the exclusive jurisdiction of the Secretary of Labor by repeatedly referencing such issue in a case in which Ross's sole legal claim is pursuant to the trusteeship provisions of the

LMRDA. Accordingly, the issue of Ross's ineligibility as a candidate for failure to pay dues is not properly before this Court and should be disregarded in considering the petition.

CONCLUSION

For the reasons set forth more fully above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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